SEXUAL OFFENCES AGAINST CHILDREN

Volume 1

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Sexual Offences Against Children

Volume 1

Report of the Committee on Sexual Offences
Against Children and Youths

appointed by

The Minister of Justice and Attorney General of Canada
The Minister of National Health and Welfare

Canada

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Committee on Sexual Offences Against Children and Youths

August, 1984

The Honourable Donald J. Johnston
P.C., M.P.
Minister of Justice and
Attorney General of Canada

The Honourable Monique Bégin
P.C., M.P.,
Minister of National Health
and Welfare

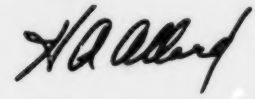
Dear Mr. Johnston and Madame Bégin:

In accordance with the Terms of Reference assigned on February 16, 1981, we have inquired into and report upon the "prevalence in Canada of sexual offences against children and youths" and "the problems of juvenile prostitution and the exploitation of young persons for pornographic purposes".

In undertaking our mandate, we have received valuable assistance and support across Canada from all levels of government, the helping professions and many community and voluntary associations. Our findings show that vital changes must be made in order to afford Canadian children and youths better protection from all forms of child sexual abuse and exploitation.

The actions we propose provide a rational and co-ordinated framework whose implementation would assure a level of protection that is essential for young persons to have against sexual offences. In recognition of the child's vulnerabilities and special needs, efforts to provide better assistance and protection for sexually abused children and youths must be assigned high priority by the Government of Canada. These activities must be undertaken on a co-operative basis with the provinces and non-governmental organizations, and must be strongly co-ordinated.

We respectfully submit our recommendations. We do so unanimously.



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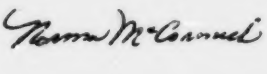

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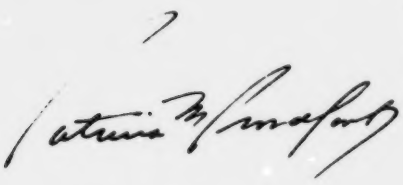

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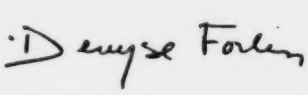

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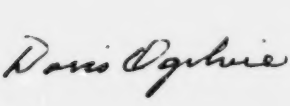

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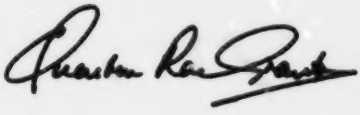

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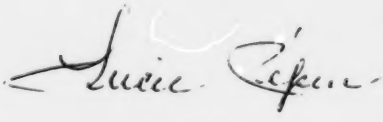

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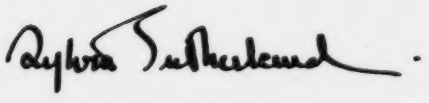

Sylvia Sutherland

Robin F. Badgley
Chairman

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Part I

Terms and Recommendations

Chapter 1

Work of the Committee

The Minister of Justice and Attorney General of Canada and the Minister of National Health and Welfare of the Government of Canada announced the establishment of the *Committee on Sexual Offences Against Children and Youths* on December 19, 1980. The charge given the Committee was "to enquire into the incidence and prevalence in Canada of sexual offences against children and youths and to recommend improvements in laws for the protection of young persons from sexual abuse and exploitation". The Committee was instructed to obtain "comprehensive factual information" about these issues and also to "examine the problems of juvenile prostitution and the exploitation of young persons for pornographic purposes".

Terms of Reference

The Committee was assigned its specific Terms of Reference when Members were appointed on February 16, 1981. The establishment of the Committee was complementary to the announcement by the Minister of Justice of proposals containing amendments to sexual offences in the *Criminal Code*. The Minister's statement noted that "further amendments to the *Criminal Code* will be considered, if necessary, following receipt of the report and recommendations of the Committee".

The Terms of Reference given the Committee were:

1. The Committee on Sexual Offences Against Children and Youths is appointed by the Minister of Justice and the Minister of National Health and Welfare to conduct a study to determine the adequacy of the laws in Canada in providing protection from sexual offences against children and youths and to make recommendations for improving this protection.

2. The Committee is asked to ascertain the incidence and prevalence of sexual abuse against children and youths, and of their exploitation for sexual purposes by way of prostitution and pornography. In addition, the Committee is asked to examine the question of access by children and youths to pornographic material. The Committee is asked to examine the relationship between the enforcement of the law and other mechanisms used by

the community to protect children and youths from sexual abuse and exploitation.

3. The Committee will collect factual information on and examine *Criminal Code* sexual offences and offences under related laws which either expressly refer to children and youths as victims or which are frequently committed against children and youths.

4. In particular, the following matters are to be examined:

   The elements of the offences with special attention to issues of age and consent and related considerations of evidence and publicity.

   The incidence and prevalence of sexual offences against children and youths in Canada. Where possible, comparisons are to be made with the incidence and prevalence of sexual offences in general.

   Whether such offences are likely to be brought to the attention of the authorities; whether they are likely to be prosecuted and, if prosecuted, are likely to result in convictions.

   The effectiveness of criminal sanctions and methods other than the application of criminal sanctions in dealing with the types of conduct involved in these offences.

5. The study is to be completed within two years from the time of establishment of the Committee, and its recommendations will be contained in a report which will be made public. Officials from the Departments of Justice and National Health and Welfare will be available for consultation and will provide any assistance the Committee may require for the purpose of facilitating its work.

In reviewing its assigned Terms of Reference, the Committee assessed available sources of information, identified issues for which research information was required and designed studies to be undertaken. Because of the scope of the research proposed, following its third meeting the Committee requested that its term of operation be extended to three years. This request was approved. During the course of its review, the Committee held 14 meetings.

Members of the Committee

In announcing the establishment of the Committee on December 19, 1980, the Ministers' statement noted that in addition to appointing laymen, its composition was to include "representatives from the fields of sociology, law, medicine, nursing and social welfare". The Members were informed that "subject to its Terms of Reference, the Committee is to operate independently". Members of the Committee were:

Herbert A. Allard, B.A., B.S.W., Senior Judge, Family Division, the Provincial Court of Alberta.

Denyse Fortin, B.A., L.L.L., Director of Continuing Legal Education, Quebec Board of Notaries. Visiting Professor, Faculty of Law, University of Montreal. Member, Committee on the Operation of the Abortion Law, Government of Canada (1975-77).

Paul-Marcel Gélinas, B.A., M.S.W., Director General, Canadian Mental Health Association, Quebec Division. General Secretary. International Year of the Child (Quebec, 1979).

Elizabeth S. Hillman, M.D., F.R.C.P. (C)., Professor of Pediatrics, Faculty of Medicine, Memorial University. President, Medical Council of Canada (1981-82).*

Norma McCormick, B.A., University of Manitoba. Director, Day Nursery, Health Sciences Centre, Winnipeg (-1982). Child and Family Services Planner (1982-84). Administrator Manitoba Adolescent Treatment Centre (1984-).

Doris Ogilvie, B.A., LL.B., LL.D., (Hon.)., Former Deputy Judge of the Juvenile Court and Provincial Court of New Brunswick. Chairperson, International Year of the Child (1979). Member, Royal Commission on the Status of Women (1967-70).

Lucie Pépin, R.N., President, Canadian Advisory Council on the Status of Women. National Co-ordinator of Clinical Research, World Health Organization - Collaborating Centre, Canadian Committee for Fertility Research.

Patricia M. Proudfoot, B.A., LL.B., LL.D., (Hon.)., The Supreme Court of British Columbia and Deputy Judge of the Supreme Court of the Yukon Territory. Commissioner, British Columbia Royal Commission on the Incarceration of Female Offenders (1978).

Quentin A. Rae-Grant, M.B., Ch.B., D.P.M., F.R.C. Psych., F.R.C.P.(C)., Psychiatrist-in-Chief, Hospital for Sick Children. Professor and Vice-Chairman, Department of Psychiatry, and Chairman, Division of Child Psychiatry, Faculty of Medicine, University of Toronto. President, Canadian Psychiatric Association (1982-83).

Sylvia Sutherland, Dipl. A.A., B.A., Commentator, CHEX Radio 98 TV 12, (Peterborough). Member, Canadian Delegation 35th General Assembly, United Nations (1980-81). Vice-President, United Nations Association of Canada (1982-).

Robin F. Badgley (Chairman), Professor of Behavioural Science, Faculty of Medicine, (cross-appointed Professor of Sociology), University of Toronto. Member, Advisory Committee on Medical Research, World Health Organization/Pan American Health Organization (1977-84).

In undertaking its work, the Committee drew continuously on assistance provided by officials from the Department of National Health and Welfare and the Department of Justice. These colleagues who served respectively as Senior Medical Advisor and Senior Counsel to the Committee were:

Robert H. Lennox, M.D., D.T.M., M.P.H., F.R.C.P.(C), Chief, Child and Adult Health, Department of National Health and Welfare (1968-1982). Medical Advisor, International Health Affairs, Department of National Health and Welfare (1982-).

Bernard Starkman, B.A., LL.B., Dip. de Dr. Comp., LL.M., of the Bars of Ontario and Manitoba. Special Advisor, Medical-Legal Policy, Policy Planning and Criminal Law Amendments, Department of Justice. Sessional Professor of Law, Faculty of Law (Common Law Section), University of Ottawa.

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*Participated in the work of the Committee until October, 1982. Resigned to assume academic responsibilities in Uganda.

Dr. Lennox was instrumental in facilitating the development of the National Hospital Survey, co-ordinating the review of the classification of medical diagnoses and assembling information on sexually transmitted diseases. As Senior Counsel to the Committee, Mr. Starkman helped to ensure that, in relation to the Committee's Terms of Reference, the relevant legal issues were taken into account in the design of the research, in the collection of information and in the analysis of the research findings. At the Committee's request, he also made valuable contributions to the classification of offences and the analysis of matters related to consent. The Committee relied heavily upon the sound judgment and wise counsel of these two colleagues.

In conducting its research, the Committee received the support and assistance from a large number of persons and institutions. This co-operation came directly from many Canadians who provided information to the Committee in meetings, by the submission of briefs and through direct participation in the National Population Survey. The scope of the Committee's mandate required that it seek information concerning sexual offences against children from all parts of the country. In this regard, the Committee's work was directly supported by voluntary organizations, different federal, provincial and municipal public services, knowledgeable administrators and experienced professionals.

The nature of the remarkable contribution made by many persons and services is attested to by the comprehensive information which was made available to the Committee from many different sources. Without this valuable assistance, generously given, there is no doubt that the intent of the study could not have been realized.

Administrative Staff

During each phase of its review, the Committee was assisted by a remarkably capable administrative and research staff. As Administrator to the Committee, Sandra Nahon effectively and efficiently co-ordinated each aspect of the complex and extensive research that was conducted. The dedicated work of this gracious and talented colleague constituted the linch-pin of the Committee's endeavour to undertake and complete its mandate. By the nature of her contribution, she effectively served as a Member of the Committee.

The Committee also warmly acknowledges the considerable contribution, personal concern and frequent voluntary overtime work of Mieko Ise and June Rilett, both of whom so capably contributed to the development, design and production of the Report.

Mieko Ise

Sandra Nahon, Administrator

June Rilett

Research Associates

Representing several disciplines, the Senior Research Associates to the Committee were responsible for the mounting and undertaking of the major research studies conducted by the Committee. Their remarkable capacity to integrate empirical findings in relation to relevant legal and social issues, their meticulous scholarship and their unstinting diligence significantly molded the work undertaken by the Committee. There is no doubt that without their special experience and training, the work of the Committee could not have been accomplished.

Kevin Chaisson, (computer programming, statistical analysis).

Elisabeth Hurd, B.A., M.S.W., (National Child Protection Survey).

Phyllis M. Jensen, R.N., B.A., M.A. (computer programming, statistical analysis).

Kristina J. Kijewski, B.Sc., M.A. (National Hospital Survey and National Corrections Survey).

Stephen J. Kloepfer, B.A., LL.B., LL.M., Director of Legal Research. (legal review, design of legally pertinent questions in the national surveys, and legal analysis of the findings obtained).

Wendy Leaver, B.S.W. (National Police Force Survey and National Survey of Juvenile Prostitution. Sergeant, on leave of absence, Metropolitan Toronto Police Force).

Brian M. Levine, B.A. (National Child Protection Survey, National Surveys on the Production, Distribution, Importation and Seizures of Pornography and National Survey of Juvenile Prostitution).

Peter Petruzzellis (National Surveys on the Production, Distribution, Importation and Seizures of Pornography. Sergeant, on leave of absence, Metropolitan Toronto Police Force).

Consultants

The scope of the Committee's review was substantially augmented by the direct contribution to the preparation of the Report given by several consultants having special knowledge and experience in relation to particular issues pertaining to child sexual abuse. Their significant contribution charted important dimensions of matters specified in the Committee's Terms of Reference. The Committee sincerely acknowledges its indebtedness to these consultants.

John W. Ackroyd, Chief of Police, Metropolitan Toronto Police Department.

Cynthia Carver, M.D., M.P.H., Assistant Medical Health Officer, Health Department, City of Regina.

William G. French, L.R.C.P. & S., L.R.F.P. & S., D.P.H., Executive Director, Medical Public Health, Manitoba Department of Public Health.

Helen Haffey, Director of Medical Records, The Hospital for Sick Children.

C. M. Hatton, Research Director, Canadian Gallup Poll Limited.

Miriam Jones, M.A., Department of English, York University.

A. G. Jessamine, M.B., Ch.B., Chief, Field Epidemiology Division, Bureau of Epidemiology Laboratory Centre for Disease Control, Department of National Health and Welfare.

Shaun MacGrath, Chairman, Ontario Police Commission.

Patricia Matusko, R.N., Program Co-ordinator, S.T.D. Control, Manitoba Department of Health.

Paul Reed, Ph.D., Director, Research and Analysis Division, Statistics Canada.

Barbara Romanowski, M.D., F.R.C.P.(C)., Director, Social Hygiene Services, Alberta Social Services and Community Health.

Elizabeth Taylor, Head, Nosology Reference Centre, Health Division, Statistics Canada.

Margaret W. Thompson, Ph.D., Professor of Medical Genetics and Paediatrics, Faculty of Medicine, University of Toronto. Senior Staff Geneticist, Department of Genetics, The Hospital for Sick Children.

The Committee learned immeasurably from the experience and counsel of the many persons who facilitated or participated in different parts of the study. We consider ourselves fortunate to have been afforded the opportunity to have worked with these capable and concerned persons. It is with deeply felt appreciation that we acknowledge their contributions.

The Committee's Approach to Research

Throughout his career, the legal philosopher Roscoe Pound distinguished between what he called *'the law in the books'* and *'the law in action'*. This distinction between what the law says and how the law actually operates is relevant to the Committee's work. Canadian law is at many points sufficiently elastic to allow for police, child protection, medical, prosecutorial and judicial discretion in dealing with sexual assailants and their victims. The exercise of this discretion is influenced by both social and legal considerations.

The challenge of research dealing with crime, in this instance sexual offences against children and youths, is two-fold. First, such research must seek to identify as objectively as possible those facts which, whether legally relevant in the formal sense or not, may influence the way in which the helping and enforcement services deal with the problem. The second challenge is to test, by means of collecting pertinent information, the validity of the assumptions on which particular legal doctrines appear to be based.

In undertaking its research, the Committee grounded its approach upon a number of assumptions about how information pertaining to its mandate could be most effectively and validly obtained. **Foremost among these assumptions**

was the Committee's recognition of the need to anchor its research on the foundation of the law and to seek directly from primary sources information pertinent to these issues. In seeking to learn about the experience of victims of sexual offences, the Committee believed that it was essential to obtain such information directly from persons who had experienced unwanted sexual acts. While recognizing that these are intensely personal concerns, the Committee believed that persons who had been victims would be willing to provide such information if given firm assurance about the confidentiality of the replies received. It was on the basis of this assumption that a national population survey was undertaken which sought to obtain information about the occurrence of sexual offences.

Children who are victims of sexual offences may turn or become known to a number of helping services, each of which provides important but different types of assistance. With respect to these services, the Committee assumed that no single source should be relied upon as the exclusive basis upon which to derive general findings about the extent and nature of sexual offences against children.

There is a paradox in relation to information about criminals and victims of crime in Canada. While there is little systematic documentation about their situation and experience, there are rich veins of potential information which have seldom been drawn upon in this regard. These largely untapped sources are the files and records of public services, notably, those of the police, hospitals, child protection and correctional services which contain detailed findings about child sexual abuse. Little of this information surfaces in the form of official agency or service statistics, with the result that it is often assumed that such information is not available or may not exist.

In order to draw directly upon the basic information available to these services and to provide a complementary assessment of the types of assistance and protection afforded victims, the Committee undertook several national surveys of cases of child sexual abuse known to public services. Despite the fact that the Committee was federally appointed, and in some instances was seeking information on matters largely under provincial jurisdiction, without exception in undertaking these surveys, the Committee received invaluable co-operation from each of the main public services involved across Canada.

In considering the reform of the law concerning socially and legally complex issues, such as those set by the Committee's mandate, the Committee believes that it is not only feasible but mandatory to seek the full participation of the relevant public services within a firm framework of federal-provincial co-operation. Issues of this kind transcend institutional and political boundaries. If their dimensions are to be fully understood and acted upon in the provision of services and amendment to the law, then all pertinent resources must be marshalled to attain these purposes.

Reflecting the multi-faceted dimensions of its Terms of Reference, each phase of the Committee's study was undertaken on the basis of an interdisciplinary perspective with respect to these issues. While the virtues of teamwork may be legion, its practice in relation to undertaking research involving the close collaboration of different disciplines may be a different matter. Each discipline has clothed certain words which are in general usage with special connotations and different ideas abound about the meaning and purpose of research.

In the Committee's experience, adapting to an interdisciplinary perspective involving close collaboration in undertaking research is neither easy nor readily accomplished. The integration of different perspectives in this study developed as a result of much patience and tolerance between Members with respect to how and why certain information should or should not be obtained. In retrospect, the Committee appreciates the unusual opportunity afforded its Members to work together and to debate, often staunchly, issues from different disciplinary perspectives. **One by-product of this work has been the Committee's realization, unanimously endorsed, that in undertaking the review of complex social and legal issues, such as those assigned in the Terms of Reference of this study, it is essential that these questions be considered from a balanced and integrated interdisciplinary perspective. No discipline, by itself, has the requisite scope of conceptual resources to encompass sufficiently the complex dimensions of such issues.**

In our judgment, failure to adopt an integrated interdisciplinary perspective is likely to result in a one-sided or partial consideration of issues and may lead to the formulation of proposals concerning the reform of services or of the law which will likely do little to redress the problems or deal with the fundamental issues at stake. Distrust in the efficacy of such proposals should be proportional to their speculative range. **On the basis of our experience, we believe that an integrated interdisciplinary approach is requisite when similar issues involving the reform of the law may be considered.**

Inherent in the Committee's approach to research was the assumption that basic information must be assembled on a uniform basis in each component of its work. Prevailing fashions concerning how research information is collected in one field may preclude the possibility of providing answers to questions which are pertinent to other disciplines. On the matter of the victim's age, for instance, questions having legal significance differ substantially from those having medical relevance and the concerns of social survey researchers often ignore those of both professions.

In the design of its research, the Committee strove to obtain and assemble basic information that would be amenable to address the concerns of different perspectives in relation to common issues. In relation to sexual offences, for instance, the Committee found that none of the existing classification systems used by different public services identified the exact nature of the sexual acts committed or was comparable. In this regard, in designing its research the Committee adopted a grounded approach based, where feasible, upon a

detailed specification of the types of sexual acts committed, the circumstances of the offences, the characteristics of victims and offenders and the types of services provided by public agencies.

With respect to issues concerning the possible reform of the law and of its administration, the Committee, incorporated a number of basic questions in each national survey. Examples of these questions include:

What are Circumstances of the Sexual Act?

Who sexually assaults or exploits young persons? What is the breakdown of these offenders by age and sex? In what manner are they related to their victims, if at all, whether legally or socially? What sorts of employment are they engaged in?

Who are the child victims of sexual assaults or exploitation? What is the breakdown of these child victims by age and sex? In what manner are they related to their assailants, if at all, whether legally or socially?

What kinds of sexual acts are engaged in between the offender and the child? How does the offender sexually touch or assault the child? Conversely, how does the offender seek to be touched by the child?

How does the sexual touching occur? By force, threats or inducements of some kind? How often are weapons used or threatened to be used? How often is the child physically or emotionally injured by the assault? How often is the act genuinely consensual between the parties?

Where does the act take place? How often is either the offender, the victim, or both, under the influence of alcohol or drugs at the time of the offence?

What Happens After the Sexual Act Takes Place?

To whom does the victim turn for help? How much time elapses before the victim tells someone about the incident? If the offence is otherwise disclosed, how did it happen to be disclosed? What length of time elapses before the police, a physician or a child protection agency are notified?

Does the victim seek or receive medical or other forms of treatment?

Is the offender charged with a criminal offence? If not, why not? If so, with what offences is he or she charged?

Is there a child protection proceeding or intervention as a result of the incident? If not, why not? If so, what is the eventual result for the child and the offender?

Is there a criminal court trial as a result of the incident? If not, why not? If so, is the offender convicted? With what offence is the offender convicted?

What sentence does the offender receive? What considerations influence the severity of that sentence? Does the offender, as part of his or her sentence, receive any medical, psychiatric or other form of treatment? Does he or she at some point get paroled, or placed on mandatory supervision?

If the offender is sent to prison for a sexual offence against a young person, is that his or her first conviction for a sexual offence? If not, what was his or her previous criminal record in this regard? Does it disclose other sexual offences against children? If so, what sorts of sentences did he or she

receive on those earlier occasions? To what extent does his or her later sentence take into account that he or she has failed either to be "rehabilitated" or to be deterred from again offending sexually against a child?

More generally, who makes the key institutional decisions at various stages? How are they held accountable and by whom?

In adopting this approach, the Committee sought to obtain both basic and applied types of information. The listing of comparable questions in each of the national surveys served as a common denominator which permitted a comparison to be made on a uniform basis between the findings obtained from different sources.

The research approach adopted by the Committee which sought to assemble comprehensive and detailed information stands in sharp contrast with that followed by a number of major proposals for reform of sexual offences against young persons and adults which have typically proceeded in the face of a conspicuous lack of empirical documentation. In the Committee's judgment, firm empirical documentation is a prerequisite to both the reform of the law and to affording better protection for the victims of crime of all ages.

By describing the wide variety of sexual behaviours which occur, the Committee believes that legislation can be drafted which is more sensitive to the realities of child sexual abuse and to its varying degrees of seriousness for the child and for society. By identifying the practical problems in law enforcement and in the delivery of social and health services, the Committee is convinced that improvements in practice and procedure can be implemented. By determining the nature and extent of child sexual abuse and the effectiveness with which our legal and social institutions react to it, the Committee believes that there is reasonable justification to hope that Canadian children can be better protected.

Research Undertaken

The details of each study undertaken by the Committee given in this synopsis are cited more fully in the pertinent sections of the Report preceding the presentation of findings.

Legislative and Advisory Reports

The reports received by the Government of Canada from legislative and advisory bodies with respect to neglected and abused children constitute an earnest of the Government's long-standing concern with the need to afford better protection for these children. The Committee's review of these official documents served to highlight a number of issues warranting special consideration and further documentation.

Legal Review

The Terms of Reference established for the Committee required both the collection of empirical research and review of an extensive body of legislation. The dimensions of the latter encompassed a review of:

- Relevant laws enacted at the federal, provincial and municipal levels of government;
- The interpretation of these laws by Canadian courts, as evidenced in reported and unreported legal cases;
- Scholarly commentary in the legal periodical literature on topics pertinent to the Committee's mandate; and
- The operation of these laws from the standpoint of the officials charged with administering them and the persons variously affected by them.

Listed below are the main components of the legal review undertaken by the Committee in relation to sexual offences against children and youths.

Major Sexual Offences. A review was undertaken of the origins and legislative histories of the major sexual offences in the *Criminal Code*, tracing the evolution of each offence from its origins in English law, its status under the criminal law of the pre-Confederation provinces, its first introduction into federal criminal law after Confederation and the manner in which it has been amended since that time.

Parliamentary Debates. Selected Canadian parliamentary debates (reported in *Hansard*) on proposed criminal law amendments were canvassed in order to gain insights into the motivating forces behind significant legislative amendments. This review included:

- The parliamentary debates preceding the criminal law amendments introduced in 1890;
- The parliamentary debates preceding the first enactment of the *Criminal Code* in 1892; and
- The deliberations of the Standing Committee on Justice and Legal Affairs in 1978, 1981 and 1982 concerning the amendments to the criminal law of sexual offences proposed in Bill C-53.

Historical Crime Statistics. At the Committee's request, a special review of Canadian historical crime statistics was undertaken by the Director of the Research and Analysis Division, Statistics Canada. The provision of this information permitted the first detailed historical review to be undertaken of sexual offences against Canadian children and youths. Crime statistics have been assembled on a continuous basis for the period between 1876 and 1973. In relation to charges laid and convictions for sexual offences, these statistics provide an historical perspective concerning changes in: the rate of charges laid; the ratio of convictions to charges; the types and lengths of sentences; conviction rates among different provinces; and the rates of charges and convictions for specific types of sexual offences in which children were victims.

Provincial Crime Statistics. Each provincial and territorial Department of the Attorney General was requested to provide the Committee with provincial annual statistics for 1980 and subsequent years on charges, convictions, and sentences handed down with respect to specified offences within the Committee's mandate.

Major Legal Decisions. The major legal decisions were reviewed that have interpreted the scope and meaning of:

- *Criminal Code* provisions relating to sexual offences, prostitution and obscenity;
- *Juvenile Delinquents Act* offences relating to juvenile delinquency and contributing to juvenile delinquency;
- Relevant provisions of the *Canada Evidence Act*; and
- Obscenity-related provisions in the *Customs Act*, the *Customs Tariff* and the *Canada Post Corporation Act*.

Proposed Federal Legislation. Proposed federal legislation in the area of sexual offences [Bill C-53; young offenders (*Young Offenders Act*); and the law of evidence (Bill C-33, the proposed *Canada Evidence Act, 1982*)] was studied in order to ascertain government initiatives directly relevant to the Committee's Terms of Reference.

Legal Status of the Child. Provincial, territorial and federal statutory provisions relating to young persons were reviewed, with particular reference to the different ages at which children attract certain legal rights and capacities.

Canadian Charter of Rights and Freedoms. The *Canadian Charter of Rights and Freedoms* and the major judicial decisions reported prior to September 1, 1983 that interpret its broad constitutional provisions were examined with respect to their potential implications for the Committee's legal recommendations.

Criminal Injuries Compensation Boards. Each provincial Criminal Injuries Compensation Board was requested to provide the Committee with annual statistics for 1980 and subsequent years concerning the extent to which compensation was sought by, and awarded to, young victims of sexual offences.

Publicity. The Committee investigated the extent to which young victims of sexual offences are protected from having their identities publicized once their cases come to the attention of the legal system. Research was conducted with respect to two avenues by which the identities of young sexual complainants might be publicized: newspapers and legal reporting services. With the assistance of Information Services, Department of Justice, the Committee examined 2806 stories concerning sexual offence cases and related matters appearing in 34 Canadian newspapers from May, 1982 to May, 1983.

With respect to the naming of young sexual complainants in official and commercial reporting services, the Committee examined reported cases for the

major sexual offences, looking for instances in which the names of complainants or information tending to identify these young persons were published. The Committee contacted the Chief Justices of each court level from every Canadian jurisdiction and requested a statement of the policy of that court with respect to the naming of young sexual complainants in judicial decisions. Similarly, the editors of the leading Canadian reporting services were contacted and requested to supply the Committee with their policies concerning the publication of the identities of young sexual complainants in their reports.

Review of Previous Research

In order to draw upon the findings of completed studies, the Committee reviewed a considerable body of reports pertaining to various aspects of its mandate. In addition to the legal review, and in the absence of a comprehensive compendium listing such studies, the Committee conducted an extensive bibliographical search of the main criminological, corrections, medical and social science journals and reports. Notices were published in the journals of several professional and scholarly associations requesting information about relevant cases and studies.

Throughout the Report, the findings of a number of the main Canadian studies are cited in relation to specific issues being considered. The review of completed research provided a necessary baseline for the purposes of identifying issues, gaps in information and the nature of the methodological research problems entailed.

National Population Survey

The Committee's mandate requested that it examine "the incidence and prevalence of sexual offences against children and youths. Where possible, comparisons are to be made with the incidence and prevalence of sexual offences in general". In this regard, the National Population Survey was undertaken to obtain information from a representative sample of Canadians concerning their experience of having been victims of sexual offences as children or adults. This survey also elicited information about the purchase of pornography and views concerning the display of pornographic materials.

The Survey's findings constitute a baseline for estimating the extent of sexual offences committed against Canadian children, youths and adults. The survey was undertaken in February, 1983 for the Committee by Canadian Gallup Poll which obtained information from a statistically representative sample of 2008 Canadians age 18 and older living in 210 communities across Canada.

National Police Force Survey

In order to document the integral role of the police in the detection of sexual offences against children and in the enforcement of the civil and criminal law with respect to suspected offenders, the Committee undertook a National Police Force Survey in which 28 police forces from across Canada participated. In developing the design of the survey, the Committee received assistance from the Canadian Association of Chiefs of Police which informed its Members about the Committee's mandate and its request for assistance in documenting cases of sexual offences against children investigated by the police. The Committee also received a firm assurance of support for its work at the 1981 Meeting of the Provincial Commissioners of Police.

In undertaking the survey, the Committee was particularly indebted to the Metropolitan Toronto Police Force. In the development of the research protocol that was subsequently used to assemble information from the 'general occurrence forms' of other forces, the Metropolitan Toronto Police Force provided both counsel concerning the design of the protocol and gave the Committee permission to pretest it drawing upon its records. The Force also approved the secording of an experienced police officer to the Research Staff of the Committee to facilitate the mounting of the national survey.

Enforcement services in each province were contacted in order to obtain an assessment of cases of sexual offences against children known to police forces across Canada. The extent of the co-operation received outstripped the resources available to the Committee for this component of its research. An even more extensive national survey of police forces could have been undertaken had time and resources permitted.

With the permission of the Ontario Police Commission, and acting upon its recommendation, the survey was extended to include a cross-section of police forces in cities and towns across Ontario. This extension of the survey permitted the collection of information from a number of smaller forces, some of which had developed special services for children and youths.

The primary source of information in the national survey was the 'general occurrence form' which contains the record of police investigation of a case. Although little of this information is subsequently transposed for purposes of assembling criminal statistics, the Committee found that the 'general occurrence forms' typically contained extensive and detailed accounts of the offences committed.

The forces participating in the National Police Force Survey were:

- St. John's
- Charlottetown
- Halifax
- Fredericton
- Quebec City
- Winnipeg
- Regina
- Edmonton

- Calgary
- Vancouver
- Yellowknife

Ontario

- Chatham
- Collingwood
- Haldimand-Norfolk
- Hamilton
- Hawkesbury
- Kingston
- London
- Nepean
- Niagara Region
- North Bay
- Ottawa
- Peel
- Peterborough
- Sudbury
- Toronto
- Waterloo
- Windsor

For each participating Police Force, complete information was documented for the full calendar year 1981; in some instances, where a small number of cases was involved, findings were also obtained for 1980. A total of 6203 cases of sexual offences against children and youths investigated by these Police Forces was documented.

In the Committee's judgment, the strength of these findings lies in the unprecedented detail with which they describe the investigation of these offences by the police. It is upon this strong empirical base coupled with information obtained from other surveys that the Committee has grounded a number of its major recommendations for law reform concerning the issues specified in its mandate.

Child Sexual Assault Homicides

The Homicide Statistics Program established by the Justice Statistics Division of Statistics Canada has assembled information since 1961 on all cases of murder, manslaughter and infanticide reported by enforcement authorities across Canada. At the Committee's request, Statistics Canada provided a special tabulation of 156 homicides having children as victims between 1961-80 that were listed as being sexually motivated or that had involved sexual assaults. On the basis of the information obtained, the Committee assessed the incidence of these homicides, the ages of the children involved, the means used to cause their deaths and compared the proportions of sexual assault homicides involving children and adults.

Child Protection Services

Child Protection Services established by provincial legislation constitute a requisite and vital component in the provision of assessment, care and protection for sexually abused children. It was in recognition of these special responsibilities that the Committee reviewed several aspects of these services.

Provincial Child Welfare Legislation. A legal review was undertaken of provincial and territorial legislation pertaining to child protection and child welfare, and of the major legal decisions interpreting aspects of these laws. This review focussed on provincial statutory definitions of 'a child in need of protection', requirements concerning the duty to report and the establishment of child abuse registers. Provincial and territorial legislation concerning the rules of evidence in proceedings in each jurisdiction and major legal cases interpreting these provisions were also examined.

Special Community and Social Services. In the course of undertaking its general research and that concerning the provision of child protection services for sexually abused children, the Committee identified several innovative programs. Examples of these are cited in the Report.

National Child Protection Survey. With the co-operation of child protection services in all provinces and the Yukon, a National Child Protection Survey was undertaken in which information was obtained concerning 1438 cases of child sexual abuse. Assistance in undertaking the survey was provided by:

- Newfoundland Department of Social Services
- Prince Edward Island Department of Health and Social Services
- Nova Scotia Family and Child Welfare Association
- New Brunswick Department of Social Services
- Le Comité de la protection de la jeunesse
- Ontario Ministry of Community and Social Services
- The Children's Aid Society of Winnipeg and the Winnipeg Regional Office, Manitoba Department of Community Services and Corrections
- Saskatchewan Department of Social Services
- Alberta Department of Social Services and Community Health
- British Columbia Ministry of Human Resources
- Yukon Department of Health and Human Resources

The survey assembled information concerning sexually abused children and youths in relation to: their social and family circumstances; the offences committed; and the assessment, provision of care and assistance provided by child protection workers. The survey also obtained information concerning the duty to report, the use of child abuse registers and the operation of philosophically different intervention approaches with respect to providing assistance for these children.

The remarkable level of co-operation and assistance provided by provincial child protection services attests to the national recognition of the gravity of the problem and to the need for continuing and effective federal and provincial co-operation for offences whose dimensions and possible resolution transcend jurisdictional boundaries.

Health Services

In recognition of the essential contribution of health services in the assessment, treatment and protection of sexually abused children, the Committee undertook several studies to obtain information concerning the medical assessment of the physical injuries and emotional harms sustained by victims and the provision of treatment for these children. Following its review of available research, the Committee undertook a National Hospital Survey, reviewed the medical classification of injuries associated with sexual offences, assessed the genetic risks of incest and obtained information concerning live births, abortions and sexually transmitted diseases contracted by children and youths.

National Hospital Survey. In each of the national surveys of the population, police forces and child protection services, the Committee sought to obtain information concerning the extent and types of injuries and harms sustained by children who had been victims of sexual offences. The National Hospital Survey, undertaken with the co-operation of 11 major hospitals in eight provinces, was developed to obtain detailed documentation of the medical assessment of sexually assaulted children and youths, the medical examination and treatment of these victims and to provide an assessment of the short and long-term consequences of the physical injuries and emotional harms incurred.

In developing the research protocol for the survey, the Committee received assistance from experienced experts in the field who reviewed the development and pretesting of the protocol and who facilitated the collection of information. The 11 hospitals participating in the survey were:

- Dr. Charles A. Janeway Child Health Centre (St. John's)
- The General Hospital Health Sciences Centre (St. John's)
- Izaak Walton Killam Hospital for Children (Halifax)
- Centre Hospitalier Sainte-Justine (Montreal)
- The Montreal Children's Hospital (Montreal)
- The Children's Hospital for Eastern Ontario (Ottawa)
- The Hospital for Sick Children (Toronto)
- The Children's Hospital of Winnipeg (Winnipeg)
- University Hospital (Saskatoon)
- University of Alberta Hospital (Edmonton)
- Vancouver General Hospital (Vancouver)

The National Hospital Survey obtained information on all reported cases of child sexual abuse which had been medically assessed and for which treatment had been provided at the 11 hospitals between January 1, 1981 and June 30, 1982. Information was obtained for 623 cases.

Medical Classification of Sexual Assault. As a component of the National Hospital Survey, the Committee obtained detailed information concerning the types of sexual acts committed, the injuries sustained by victims,

where these had occurred, and the medical diagnoses of the patients' conditions. Because classification systems that accurately identify these conditions are essential to the network of services affording protection for victims of these offences, the Committee reviewed the medical classification of children who had been sexually assaulted. This review was undertaken with the assistance of the Head of the Nosology Reference Centre, Statistics Canada and the Director of Medical Records, Hospital for Sick Children (Toronto).

Genetic Risks of Incest. With the assistance of an internationally respected geneticist, the Committee reviewed the genetic risks to children of incest with respect to the likelihood of their experiencing more hereditary disabilities than children born from other types of parents.

Sexually Transmitted Diseases. In order to assess the extent to which children who had been sexually assaulted were at risk of contracting a sexually transmitted disease, the Committee sought to obtain this type of information in its national surveys. The Chief, Field Epidemiology Division of the Bureau of Epidemiology, Department of National Health and Welfare provided the Committee with national statistics on the reported distribution of gonococcal infections among children and reviewed the findings obtained by the Committee.

The Committee also received assistance in this component of its research from Social Hygiene Services, Alberta Department of Social Services and Community Health, and the Sexually Transmitted Disease Control Program, Manitoba Department of Public Health. The latter Department provided the Committee with information for all children age 16 and younger who were reported to have been examined and/or treated with respect to sexually transmitted diseases.

Convicted Offenders

Sentencing of Offenders. An examination was made of the sentencing provisions in the *Criminal Code* relating to offences of a sexual nature and of the special provisions pertaining to dangerous offenders, as well as of the judicial elaboration of the principles of sentencing. The key provisions and legal decisions were reviewed in relation to: the *Parole Act* and regulations; the *Penitentiary Act* and regulations; and the *Prisons and Reformatories Act.*

National Corrections Survey. With the co-operation of 10 correctional services, information was assembled about 703 convicted child sexual offenders who were in custody or under supervision on February, 1982. The services participating in the National Corrections Survey were:

- Newfoundland — Adult Corrections Division, Department of Justice
- Prince Edward Island — Provincial Probation and Family Court Services, Department of Justice
- Nova Scotia — Department of Corrections, Research and Planning

• New Brunswick	Correctional Services Division, Research and Planning
• Ontario	Ministry of Correctional Services, Research and Planning
• Manitoba	Department of Community Services and Corrections
• Alberta	Ministry of Correctional Services Research and Planning
• British Columbia	Corrections Branch, Research Analysis Section, Ministry of the Attorney General
• Yukon	Whitehorse Correctional Centre
• Government of Canada	Correctional Service Canada, Operational Information Services

Information concerning all known convicted child sexual offenders was obtained in seven jurisdictions and a substantial proportion of cases was documented in the remainder. The participating correctional services provided expert counsel, reviewed the research protocol and facilitated the collection of information.

On the basis of the information obtained in the National Corrections Survey, an assessment was made of the social backgrounds of these offenders, the circumstances of the sexual offences committed against children and youths and certain elements of the offences which may be considered on sentencing. For offenders for whom such information was available, findings were obtained concerning assessments of their mental state and the types of treatment and counselling received while in custody or under supervision.

The recidivism experience of the convicted child sexual offenders was considered in relation to all reported previous convictions and those having committed sexual offences. With the permission of Correctional Service Canada, information was obtained on all convicted child sexual offenders who had been found dangerous on sentencing. The situation and experience of these 62 offenders was considered in relation to similar findings obtained about other convicted child sexual offenders.

Juvenile Prostitution

The Committee was asked to ascertain the extent of exploitation of children and youths by way of prostitution. "Juvenile prostitution" has no specific status in Canadian law. It is dealt with under more general legislation pertaining at the federal level to juvenile delinquency and the regulation of prostitution generally, and at the provincial level under the provisions of child welfare statutes.

In relation to prostitution involving young persons, the Committee reviewed the provisions of the *Criminal Code* pertaining to soliciting, procuring, living on the avails of prostitution and keeping a bawdy-house. In order to obtain information about the local regulation of prostitution, the City Clerks of

18 cities across Canada were requested to provide copies of any municipal by-law(s) enacted in relation to this issue. The cities contacted were:

- St. John's
- Charlottetown
- Halifax
- Fredericton
- Quebec City
- Montreal
- Hamilton
- Ottawa
- Toronto
- Winnipeg
- Regina
- Saskatoon
- Edmonton
- Calgary
- Vancouver
- Victoria
- Whitehorse
- Yellowknife

From these sources, the Committee learned of various local initiatives in these and other communities. The Committee reviewed several studies that had considered juvenile prostitution, but it found none had dealt with more than a small number of cases or had assessed the problem at the national level. In order to obtain such information, the Committee undertook a survey, both directly and in co-operation with a number of local services, in which indepth interviews were held with 229 juvenile prostitutes in eight cities across Canada.

Because of the nature of juvenile prostitution, the youths from whom this information was obtained did not constitute a sample. These interviews provided detailed information about their social background, the process whereby they had become prostitutes, how they customarily met their clients and the nature of their encounters with the police and social services.

Child Pornography: Production and Accessibility

The Committee's Terms of Reference stipulated that it determine the incidence and prevalence of sexual exploitation of children by way of pornography, and to examine the question of access by children and youths to pornographic material. In relation to these provisions, the Committee obtained information in several of its national surveys (population, police force, child protection and corrections) concerning cases in which children were known to have been exposed to or involved in the production of pornography. In addition, surveys were conducted pertaining to the accessibility by children to pornography and seizures made in relation to the importation of sexually explicit depictions.

Federal Legislation. In its legal review of the Canadian law of obscenity, the Committee considered the existing network of federal laws which, taken together, regulate the different manifestations of child pornography. This review included the pertinent sections of the *Criminal Code*, statutes relating to the unlawful importation and seizure of unauthorized goods into Canada (*Customs Act*, *Customs Tariff* and *Canada Post Corporation Act*), and the federal *Broadcasting Act*. Case studies were assembled from a number of sources documenting the kinds of situations dealt with under the pertinent sections of these statutes.

Provincial and Municipal Enforcement Practices and Guidelines. On the basis of visits to provincial Departments of Attorneys General and major municipal police forces across Canada, information was obtained on official

provincial guidelines in relation to the distribution and sale of pornography, where these had been established, and on provincial and municipal enforcement policies and practices.

Provincial Regulation and Classification of Films. Eight provinces have enacted legislation to regulate the public exhibition of films. The Committee reviewed the legal mandate, nature, policy and practice of each of these provincial boards, and in relation to three films (Caligula, Pretty Baby and Beau Père) considered the classification practices and the setting of age restrictions with respect to different film depictions of explicit sexual behaviour.

Municipal By-laws. In relation to the enactment and operation of municipal by-laws intended to control the sale or viewing of sexually explicit matter, the Committee contacted 18 major cities across Canada requesting information on and copies of any by-law(s) passed in relation to these issues. The legal problems encountered in the enactment of by-laws of this kind were reviewed.

Importation. In addition to its legal review of the statutes relating to the unlawful importation of unauthorized goods into Canada, the Committee reviewed the administration and operation of agencies involved in this area of enforcement in relation to the detection and seizure of child pornography (Revenue Canada Customs and Excise Division, R.C.M.P. Customs and Excise Section, and provincial and municipal police forces).

National Survey of Seizures. With the assistance of an experienced police officer seconded from Project "P", a Special Task Force jointly operated by the Ontario Provincial Police and the Metropolitan Toronto Police Force, the Committee undertook a survey to obtain information about the importation of immoral or indecent materials, including child pornography, into Canada. In the National Survey of Seizures, visits were made to all Regional Customs Offices and information was also derived from the central files of the R.C.M.P. Customs and Excise Section and the Revenue Canada Customs and Excise Division. The survey assembled findings with respect to 26,357 seizures of all kinds of obscene and pornographic matter, including child pornography, between 1979 and 1981. This source provides a basis upon which to assess the amount of child pornography in relation to other types of pornography detected by enforcement authorities which persons had illegally attempted to bring into the country during the three year period.

Production of Child Pornography. An assessment was made of the production of child pornography in Canada which drew upon information provided by: National Police Force Survey; National Population Survey; National Accessibility Survey; Provincial Attorneys-General; R.C.M.P. Customs and Excise Section; Revenue Canada Customs and Excise Division; and major legal decisions pertaining to obscenity.

Contents of Pornography. In order to determine the types of sexually explicit depictions contained in pornographic magazines, a content analysis was undertaken for June, 1983 of 11 magazines which are readily accessible in

retail outlets across Canada. The listing of the types of sexual acts depicted in these magazines, which had an audited circulation of over 14 million copies in Canada in 1981, was based on the classification used in the analysis of sexual offences against children adopted in the Committee's other surveys. This classification was also used as the basis for the review of the text, editorials, letters and advertisements contained in the magazines.

Circulation Statistics. In the National Accessibility Survey of Retail Outlets, the Committee identified that a total of 540 different "adult" magazine titles were available across Canada between 1982 and 1983. With the co-operation of the Audit Bureau of Circulation, information was obtained concerning the audited circulation of a number of major publications which permitted an analysis of national and provincial *per capita* sales and the sales value of these publications. Circulation trends for magazines audited by the Bureau were documented for the period from 1965 to 1981.

National Accessibility Survey of Retail Outlets. With the co-operation of a number of volunteers (persons, committees, colleges and universities), a survey was undertaken concerning the display of pornographic material in 1091 retail outlets across Canada. In this regard, information was obtained about the type of retail outlet selling pornography, the location and number of materials displayed, their height from the floor, whether they were displayed separately or with other magazines and the extent to which covers were exposed to view or were shielded.

Purchase of Pornography. In the National Population Survey, information was obtained concerning: the age at which pornography had first been purchased; the types of pornographic matter purchased; views concerning the display of pornography in retail outlets and concerning the setting of age limits in relation to the purchase of pornography; whether persons had experienced unwanted exposure to pornography; and whether they or persons whom they knew had been harmed by pornography.

The findings of the National Population Survey provide the basis to determine the proportion of persons who had first bought pornography when they were children or youths, their usual current buying habits, and the views of a representative sample of Canadians concerning the display of pornography and the setting of age limits with respect to its purchase.

Associated Harms. On the basis of findings obtained in the national surveys of the population and police forces, the Committee obtained information on incidents in which children had been exposed to pornography and subsequently had also been sexually assaulted by the same person.

Briefs and Submissions

Following the announcement of its appointment, the Committee received a number of letters from individuals and briefs from professional associations

and interested groups. The Committee was also contacted at various times by representatives of the news media and the reports subsequently carried regionally and nationally by these sources fostered the submission of an additional number of briefs to the Committee. As a means of directly seeking information from concerned individuals and groups, the Committee published a notice in 23 major daily newspapers across Canada. These newspapers, selected on the basis of those having the largest regional and/or national circulation were estimated to have had an audience of 3.7 million readers. Following the listing of the Committee's Terms of Reference, the notice requested:

> "We welcome letters and briefs from children and youths who have been sexually abused, as well as from adults and associations concerned with these problems. We also welcome recommendations on how better protection can be provided."

As a result of the various announcements and accounts carried by the media about its assignment, the Committee held meetings with several dozen individuals and representatives of groups and received a total of 253 written submissions. The concerns and issues raised in these submissions varied considerably depending upon whether they came from individuals, professionals or voluntary groups and associations.

Letters from individuals constituted about half of the submissions (49.4 per cent); these were about evenly distributed among persons who had been victims of child sexual abuse, who had known victims, or who were concerned about these problems. About two in five persons respectively had been victims or had known victims. A third of the former group (33.3 per cent) identified fear, ignorance and stigma as the reasons why victims did not seek assistance or were reluctant to do so. Almost an equal number (29.3 per cent) cited as a problem the disbelief of those who had been turned to for assistance that the incidents had actually happened.

Few victims or persons who had known victims (13.3 per cent) adopted a punitive approach towards child sexual offenders. About one in three (35.7 per cent) called for counselling for victims, family members and offenders. There was little concern among this group about the need to amend legislation or how the helping services might be better organized or co-ordinated. Only a few individuals who wrote to the Committee commented either about juvenile prostitution (4.0 per cent) or pornography (5.3 per cent).

Professional workers and associations submitted about a third (30.9 per cent) of the submissions. The primary emphasis of their briefs (65.9 per cent) revolved about the need to improve the training of professionals with respect to child sexual abuse and the more effective co-ordination of the services of other professional groups involved in providing assistance. Two in five of the professional briefs (38.6 per cent) condemned the law as obstructive to the effective provision of care and harsh in its consequences for the victims of child sexual abuse. About half of these briefs (47.7 per cent) recommended the treatment of victims, their families and offenders as an option that was preferable to the intrusion of the law.

About a fifth of the briefs from professional workers and associations referred to the issues of the access by children to pornography (18.2 per cent) and children involved in the production of pornography (18.2 per cent). About one in nine (11.4 per cent) addressed the issue of juvenile pornography. Their recommendations in this regard included: the need to provide counselling that was trusted; the provision of temporary accommodation for transient youths; and the legal authority to apprehend youths known to be juvenile prostitutes.

About one in five briefs (19.7 per cent) received by the Committee was submitted by voluntary associations and community groups. Seven in 10 (70.6 per cent) of these briefs identified the early access by children to pornography as a problem about which more public education was required and about which government should take prompt action. Six in 10 of these briefs (58.8 per cent) condemned the production and sale of child pornography. The briefs called for a clear and specific definition of obscenity in the law.

While six in 10 briefs from associations (58.8 per cent) referred to child sexual abuse, there was no central theme in relation to the issues dealt with or the recommendations made. About one in six briefs (17.6 per cent) addressed the issue of juvenile prostitution. The recommendations made included the need to provide for greater protection for them and the imposition of stiff penalties on clients.

The types of concerns raised in the briefs differed sharply depending upon whether they had been submitted by individuals, professionals or voluntary associations. Except for the persons who themselves had been victims of child sexual abuse, it was evident from the briefs that no single group stood clearly apart as a representative spokesman for their concerns. On the basis of its review of the briefs submitted, the Committee concluded that when sensitive issues involving much fear, stigma and ignorance are being considered, seeking comprehensive and representative information by means of public notices or hearings is an inappropriate avenue to follow. Adopting these means serves other valuable purposes with respect to identifying issues, the alerting of concerns and the submission of important recommendations. This approach taken by itself, however, is not a substitute for obtaining information directly from persons who have been sexually assaulted, who report that they have been harmed by exposure to pornography or who have been juvenile prostitutes. Except in rare instances, these are not issues that persons who have experienced these situations are willing to speak openly about, except where there is a trusted assurance that the confidentiality of their accounts will be honoured.

The letters and briefs received by the Committee raised many significant issues and alerted its Members to problems requiring full consideration and documentation. The major recommendations made identified the need to provide education for Canadian children with respect to protection from unwanted sexual acts, proposed ways that the helping services should be strengthened in the provision of care and called for the amendment of the law of obscenity. The

Committee acknowledges the assistance given by persons and groups submitting these briefs, many of which contained extensive documentation about the issues raised. The evidence and recommendations contained in the briefs received by the Committee were given careful consideration in relation to the issues studied and the framing of recommendations.

Chapter 2

Child Sexual Abuse in Canada: An Overview

Persons who have been sexually abused as children and youths have told us of their anguish and sense of helplessness, feelings intensified by their not knowing how they might have sought appropriate help. Resulting from our work, we have been profoundly moved by their betrayed hopes and their suffering. Many of these victims have been scarred for life with uncertainty, fear and despair. They have asked clearly "Can you help?". Canadians cannot evade this appeal nor think wishfully that this situation will somehow right itself without direct and constructive action being taken. These experiences represent an intolerable situation. It is one which must not be allowed to continue.

Child sexual abuse is a largely hidden yet pervasive tragedy that has damaged the lives of tens of thousands of Canadian children and youths. For most of them, their needs remain unexpressed and unmet. These silent victims — and there are substantial numbers of them — are often those in greatest need of care and help. Only a few young victims of sexual offences seek assistance from the helping services and there are sharp disparities in the types and adequacy of the services provided for them in different parts of the country, and even within communities.

Our Report raises issues which until recently have seldom been discussed candidly and incisively. While child sexual abuse is only one of many problems facing Canadians, it cuts across many facets of the nation's legal framework and the public and private services. There are no simple or instant solutions. We believe that none can be realized without a strong commitment to develop a comprehensive and co-ordinated national approach involving all levels of government and non-governmental agencies.

The National Concern

Canadians are deeply concerned about the need to provide better protection for sexually abused and exploited children and youths. This strongly held concern is national in scope. It cuts across all social, religious and political

boundaries. It encompasses all forms of sexual abuse of the child, whether this involves sexual assault, juvenile prostitution or the making of child pornography.

In response to these concerns, we believe that changes can — and must — be made. In submitting our recommendations, which are based on an extensive review of child sexual abuse in Canada, we have sought to lay an integrated foundation upon which rational social and penal policies can be developed and implemented.

The Role of the Law

The existing laws, both criminal and civil, lack a central purpose and rationale with respect to affording protection for children against sexual offences. Many of these statutes are worded in archaic and imprecise language. They have been separately amended at different times without reference to their impact on related legal provisions and do not correspond to the types of sexual acts actually committed against children.

The Canadian legal system has established in the civil and the criminal law two distinct means of responding to harmful actions committed against children and youths. Either or both of these approaches may be followed in incidents involving child sexual abuse. Under the provisions of provincial child welfare legislation, the state has the authority to intervene, or if the need is shown, to remove a child where it is deemed that he or she is being abused or neglected. In contrast, the criminal law provides the basis for the laying of charges against suspected offenders and for their punishment after conviction.

A crucial weakness inherent in the existing legal framework is that, in practice, there are no clearcut procedures establishing when either or both of these two contrasting forms of state intervention should be used. These important decisions, having critical consequences for the well-being of the child, are largely left to the discretion of attending helping and enforcement workers. As a result, instances occur that constitute grave negligence either because there is insufficient assessment of the child's need or because there is inadequate follow-up to assure that the child is fully protected from the risk of further sexual abuse.

Child sexual abuse differs in several important respects from sexual offences committed against adults. Historically, Canadian criminal law has failed to recognize that child sexual abuse is a complex phenomenon, one that encompasses many different forms of unacceptable sexual behaviours. Many of the terms now used in the law obscure the nature of the conduct being prohibited, making it virtually impossible in some cases to know whether adequate protection is in fact being provided for children.

A central purpose of the criminal law is to prevent persons from harming others and to punish those who do so. Some observers have contended that

since these purposes are not being realized by certain sexual offences, these offences should be repealed. Their argument rests on the contention that certain forms of sexual conduct which they believe are not harmful to others are prohibited by the criminal law. It has been suggested, for instance, in a number of widely cited reports completed abroad, that since few children are seriously harmed by sexual offenders, the provisions relating to these offences serve no useful purpose. These commentators have noted that sexually abused children are more likely to be harmed by the bitter reactions of their parents or the harsh exposure to legal proceedings than by having been victims of sexual abuse. From this perspective, child sexual molesters are typically portrayed as harmless, timid and inadequate persons who need compassion and treatment rather than being held accountable for their actions.

While we concur that many provisions in the criminal law of sexual offences are out-dated, our findings clearly indicate that there is no basis for the alleged "harmlessness" of unwanted sexual acts committed against children or for the belief that most of the offenders are "harmless" individuals. We have found that many young victims were encouraged, seduced and intimidated by sexual offenders. Some of these children sustained physical injuries. Many more experienced enduring emotional and social harms. Our findings clearly show that these children have special needs and vulnerabilities which must be recognized and protected by the criminal law and that existing provisions do not adequately accomplish these purposes.

In order to provide better protection, our proposals are based upon five principles involving the clear specification of: the nature of the sexual acts committed; the age of the child who was the victim of the offence; the child's lack of consent; the type of legal or social relationship between the child and the offender; and the injuries and harms incurred by the young victim. Our proposals are complementary to the sexual assault offences which became law in January, 1983 and are compatible with the criminal law amendments tabled in February, 1984.

We believe that our proposed reforms would provide better protection for children and youths. These reforms would clearly and unmistakably identify those types of sexual conduct committed against young persons which Canadians regard as unacceptable. On the basis of our proposed legal framework, there would be no doubt about the specific nature of the offences for which offenders would be liable to punishment. The changes we propose would directly assist in the enforcement of the law by providing the police and the Crown with specific and objective facts upon which to obtain evidence.

Our proposed reforms derive from the extensive research we have conducted. This has clearly identified a wide range of different types of child sexual abuse and exploitation that cannot be adequately dealt with by the general and vague offences set out in the *Criminal Code*. We believe that the framework we propose would provide a more realistic and rational basis for penal policy with respect to sexual offences against children and youths. At the present time, no such clearly enunciated policy exists.

Just as the sexual offences in the criminal law fail to recognize the many different types of child sexual abuse, there is likewise no rational sentencing policy in regard to sexual offences committed against young persons. The same behaviour may be charged under several different sections of the *Criminal Code*, each carrying a different maximum penalty and having different evidentiary requirements. Our research clearly documents that this situation has resulted in confusion in the laying of charges and the sentencing of offenders. For example, offenders who had committed more serious sexual acts were consistently given proportionately lighter sentences than those who had committed more minor offences.

The assumption is made in some quarters that the sentences imposed by courts are logically and directly related to the types of acts proscribed in the offences. On the basis of this assumption which has not been empirically documented, it has been advocated that a separate section of the *Code* be established in regard to the sentencing of offenders.

Our research findings indicate that these assumptions are invalid in relation to sexual offences committed against children and youths. For many of the existing offences, there is only a partial congruence between the nature of the sexual acts committed and the charges laid or the sentences imposed. Instead of developing a separate section of the *Code* dealing with sentencing, we recommend that the sexual offences against children and youths should be realigned to accord with the specific sexual acts committed and that the sentences imposed be related rationally to this re-structuring of the criminal law.

The Child's Evidence

In addition to the reform of the criminal law of sexual offences against children and youths, we believe that a fundamental change is needed in the law to permit children to speak directly for themselves at legal proceedings. While recently the truthfulness of victims of sexual offences has been regarded with less scepticism than in the past, the law still regards children's evidence with suspicion.

We believe that there should be no special rules with respect to the child's legal competence to give evidence in court. We recommend that a child's evidence should be received and considered in the same light as that of adults. Our research indicates that the assumptions about the untrustworthiness of young children and their inability to recall events with respect to sexual offences are largely unfounded.

The Helping Services

While all nations seek to prevent lawless behaviour, it is apparent that any legal system is insufficient by itself to realize these purposes. Other conditions

have to be present if a society's children are to be safe. These necessary conditions include an ingrained respect for the dignity of the person, a system of education that informs children and parents about risks and the means of protection which may be sought and the provision of services of high quality to meet the needs of victims.

There is a bewildering variety of public and private programs across Canada that are available to provide assistance and protection for sexually abused children. These functions are divided between federal, provincial and local levels of government and include a broad assortment of national, community and voluntary associations. Each service or program typically draws upon the skills, specialized knowledge and practical experience of workers trained in different specialties.

What stands out sharply in the work of these different services is the immense lopsidedness of the services provided. Too often, decisions to assist the sexually abused child are made in relative isolation; the policies affecting the care of these children are frequently established by professional workers without a full and open consideration of their propriety or for the short and long-term consequences for the children being served.

There is much 'balkanized' rivalry between these services, some of which have assumed such distinctive identities of their own that they are relatively independent of or impervious to the main concerns of the public. In many instances, agencies have developed services which are believed to meet the needs of sexually abused children, but which in fact fail to do so adequately or effectively. These shortcomings in the provision of services are guarded by strong institutional defences. The arguments most commonly heard here are that the services do not have enough resources and facilities or that other services are insensitive to the needs of children and are incompetent to help them.

Those who hold these views tend to advocate a rigid and narrow specialization in the field of child sexual abuse, namely, that their programs are the only ones appropriate to make critical decisions about the needs of these children and the types of assistance that should be provided for them. They also have correspondingly rigid attitudes to support this perspective.

As a result, critical lines of tension have developed which involve competing strategies regarding the optimal provision of care for the young victims of sexual offences. It is evident in light of our findings that the relative strength with which these ideas are held directly affects both the type and adequacy of what is undertaken on behalf of these children.

Historically, each of the main helping services has developed somewhat different concepts of child protection, different means for assessing and investigating the needs of young victims, different standards in determining how assistance can best be provided and different ways of providing such help. Our research indicates that as a result of these different perspectives, many sexually abused children either received no assessment or that their needs were only

partially and inadequately considered. Many were left in positions of continuing risk with insufficient follow-up to ascertain that their safety was fully assured.

In each of the main public services, there is much latitude in the discretionary decisions that may be made about the management of sexually abused children. These critical decisions include: whether the incident is reported to the police or not reported; whether some acts are considered minor or serious; whether assessment — none, partial or complete — is made of the child's situation and needs; and whether care and assessment are provided exclusively by that agency or whether other services are contacted and consulted.

The making of discretionary decisions is an inherent and essential feature of all forms of professional work. However, in the absence of clearly enunciated and monitored standards, there is the risk and reality that decisions may be made which result in an incomplete assessment of the child's needs.

Our findings leave no doubt that these deficiencies occur. It is evident that, to the extent that each helping service adheres to the principle of preserving its institutional and professional autonomy to the exclusion of seeking external counsel and assistance, it may correspondingly fail to provide these children with needed comprehensive assessment, care and protection.

There is also an enormous difference of opinion in providing these services as to whether the child welfare laws or the criminal law should be invoked. In practice, this dichotomy has resulted in the development of different intervention approaches having sharply different consequences in identifying the needs of sexually assaulted children and in affording them adequate protection. It is evident from our findings that, whichever of the main intervention approaches is adopted, what is often missing is an adequate assessment and investigation undertaken on behalf of the child.

Our findings show that the provisions of provincial child welfare legislation are frequently not operating on the basis intended by legislators. In practice, child protection services are neither turned to extensively by young victims or their families, nor do they receive many referrals of such cases from other helping services.

While encompassing a wide range of situations in which the child warrants protection, provincial child welfare statutes provide no guidance concerning whether these provisions or those of the *Criminal Code* are to be invoked. Even within specific jurisdictions, it is evident that policies which are said to have been established are inconsistently followed. Likewise, the provincial child welfare statutes do not specify what is to be undertaken when the situation and needs of a sexually abused child are being assessed. With respect to these issues, we believe that all provincial child welfare statutes should be reviewed and, where required, amended to provide more clearcut guidance concerning what is to be undertaken in the assessment of sexually abused children and in

specifying the review procedures to be followed to assure that these standards are being met.

Principles of Practice

To provide care and protection for sexually abused children, we strongly adhere to the principles that:

1. Effective educational programs must be developed that inform children and their parents about the risks of child sexual abuse and ways to obtain assistance.
2. Appropriate, available resources must be more effectively co-ordinated.
3. Rigorous attention must be given to assuring that these services are provided in accordance with established and assessed standards.
4. There should be full, continuous and independently reviewed documentation of what is being done on behalf of the child.

We recognize that there are important unresolved issues concerning the provision of certain aspects of *sexual education and health promotion* for Canadian children. Even so, we believe that there is an urgent need to provide children and youths with practical training in recognizing the danger signals of sexual abuse and exploitation and how to protect themselves from the risks of unwanted sexual conduct. In addition to affording better protection against child sexual abuse by the reform of the child welfare laws and the criminal law, and the strengthening of the helping services, the development of sensitive and effective educational programs made available for all Canadian children and their parents would, we believe, have a powerful effect in directly protecting children and informing them about what they should do when such incidents occur.

With respect to the need for an *effective and integrated co-ordination of the several helping services*, we reject the notion that adequate protection for the child can only be provided by means of a single approach. There are many different means whereby these purposes may be realized; it is apparent in some parts of Canada that a number of programs are evolving which recognize the need to bring helping services having common objectives more closely together.

The experiences of these special programs — still few in number — should become better known. It is an anomaly that the existing programs in Canada have been largely ignored or remain unknown, while the experience of foreign programs which cannot be readily replicated in this country have been widely acclaimed. We believe that the special programs that have been established in Canada should be fully documented and that their efforts to provide comprehensive assessment, care and protection for young victims of sexual abuse should be considerably strengthened. These programs are providing a leadership which could serve to foster a broader network of services providing a high quality of assistance for sexually abused children across Canada.

A third principle which we believe must be firmly established in practice and in legislation is the *formulation and application of standards* to ensure that the needs of sexually abused children are being adequately met. Not only do our findings show that there is an unequal provision of needed services for these children, but that we are also making poor use of available resources with the result that the adequacy of the services rendered fluctuates widely. In the absence of standards, or of sufficient steps taken to ensure that existing standards are being applied, our findings indicate that there have been regrettable errors of judgment resulting in children being insufficiently assessed concerning the harms they may have sustained and inadequate investigations concerning their continuing risk of further abuse.

Instead of these critical decisions being reached informally, there is a clear need to establish explicit standards for the assessment of sexually abused children. In some quarters, this view may be challenged on the grounds that such standards are unnecessary, that they have already been established, or that their introduction would constitute an infringement of professional judgment and autonomy. With the exception of certain programs, we found little evidence that standards existed which were being consistently or rigorously followed, and where they have been established, of their being reviewed to ensure that they were being observed. Those who may choose to dispense with agreed and applied standards have the responsibility to propose other workable alternatives. We believe there are none that are not subject to the real possibility of serious errors of judgment.

In our view, the setting of standards, which are widely recognized and applied, performs an essential, if not always a welcome job. Such standards should be grounded in the judgment of experienced persons having different perspectives of these problems. Their application should be independently reviewed and documented, and they should be periodically revised and strengthened. In light of our findings, there can be no doubt about the need to improve the quality of the assessment and care that are being afforded these children.

Our fourth principle, the *need for adequate information* concerning the operation of existing programs, constitutes a requisite foundation if more effective services are to be developed. Existing official information systems are virtually worthless in serving to identify the reported occurrence and circumstances of child sexual abuse.

Without exception, all of these systems are so seriously flawed that they fail to provide even rudimentary information about the victims of sexual offences, whether they are children, youths or adults. Although this information is available in the front-line reports of investigations, there are no provincial or national statistics of how many sexual offences against children have been investigated by the police. Accurate statistics in this regard are virtually non-existent among child protection services. The system of medical classification of injuries fails to identify the major types of sexual assaults committed against victims. The available statistics on sentencing prevent judges from

being able to assess the efficacy of their decisions imposed upon convicted child sexual offenders. Official reporting systems also contain significant omissions about those offenders who are deemed to be among the most dangerous criminals in the country, many of whom have been convicted of sexual offences against children.

In light of these deficiencies, it is hardly surprising that at the present time we have a very imperfect understanding of the officially known occurrence of sexual offences against children. It is significant that none of the existing systems provides for an accurate listing of information in accord with the sexual offences in the *Criminal Code*, let alone information about who the victims of these offences are. The absence of comprehensive and accurate information, which it would be readily feasible to obtain, effectively precludes the documentation of the nature and adequacy of the protection afforded by existing sexual offences or of the benefits that may be gained by amendments to these provisions in the *Criminal Code*.

The state of research on these issues is at about the same level as that of official information systems. While over the years considerable public resources have been assigned to support research, many of the studies in the fields reviewed by the Committee have been severely limited in their design and scope. Most of the available research reports have failed to take into account the circumstances of victims, the basic elements of the offences committed or the wide range of relevant legal issues.

In relation to both official information systems and research, it appears that in the past there has been little in the way of informed direction given by the various levels of government in order to ascertain the extent of sexual offences committed against Canadians of all ages. Insofar as government fails to identify these problems by fact, and not by inference, it must assume a major part of the responsibility for not providing leadership in affording better protection for the victims of sexual offences. It is intolerable that knowledge about the provision of the main helping services provided for sexually abused victims of all ages should be blind-folded by the absence of essential and obtainable information. These are instruments which are clearly within the authority of government to amend, in order to make them an efficient means of affording better protection.

Needed Legislative Action

Our review indicates that what is now lacking is any widely agreed upon policy providing for an orderly, comprehensive and rational development and provision of services for the assistance and care of sexually abused children. We believe that the needs of the sexually abused child are too varied and complex to be adequately served by a single helping service. To understand their needs and the harms that they may have sustained requires the complementary provision of a broad range of services. In saying this, however, we believe that

the direct care of the child should be provided by as few persons as possible. Such a step is not incompatible with drawing upon a full range of professional experience and depth of judgment which should be marshalled to assist those persons who work directly with the child.

The obstacles that now hinder the achievement of better protection for sexually abused children are not insurmountable. While in the short run they represent serious barriers to realizing this aim, we have no doubt that many of these problems can be resolved by an energetic and joint endeavour involving all levels of government working in full co-operation with non-governmental organizations.

Parliament and the legislatures of the nation are essential anvils in shaping compelling priorities and in providing leadership concerning the direction to be taken in achieving them. In relation to the problem of child sexual abuse, we believe it is the proper responsibility of government to establish clear social and penal policies whereby better protection can be provided and which through time may serve to reduce the occurrence of these offences. It is clear that these policies cannot be developed in isolation by any one level of government. Their success will require leadership, co-ordination and a firm political commitment to assign sufficient resources.

Our work has shown us the complex dimensions of this deeply rooted tragedy. We know that they are — and will be — difficult to resolve. We know that adequate assistance and protection have not yet been achieved. And we know that we must do better and that as a nation we have the means to do so.

The answer to the appeal "Can you help?" must be to seek to serve in exemplary fashion the special needs and vulnerabilities of sexually abused children. We believe that it is only by joint and continued endeavour that Canadians will be able to ensure the dignity and worth of our children who are victims of sexual offences and to fulfill our unshakable purpose of preserving that dignity.

Chapter 3

Recommendations

During a period of over a century following Confederation in 1867, there was no major revision of the complete legal framework of the Canadian criminal law of sexual offences. Since the beginning of the 1980s, however, several significant legislative amendments and proposals have been brought forward in response to a growing public concern about the need to provide better protection against these crimes.

It was in the context of these important legal reforms that the Committee was appointed to deal directly with how a comprehensive and rational legal and social framework could be provided in order to afford needed assistance and protection for the young victims of child sexual abuse. In light of its extensive findings, the Committee strongly believes that advantage should be taken of the momentum of recent legislative reforms to extend all necessary protection to Canadian children and youths against sexual offences.

The Committee's mandate was to determine the adequacy of the laws and other means used by the community in providing protection for children against sexual offences and to make recommendations for improving their protection. On the basis of our findings about some 10,000 cases of sexual offences against children and youths, our principal conclusions are that these crimes occur extensively and that the protection now afforded these young victims by the law and the public services is inadequate. The law is inequitable in its application. Sharp inequalities exist, often occurring in the same community, in the provision of assistance and protection for the victims of these offences.

In undertaking its assignment, the Committee's main concern was with how the well-being and interests of the child could best be served with respect to affording protection from sexual offences. Because of the child's vulnerability and special need for protection and security, we believe that assuring these purposes must be a paramount objective of the civil and criminal law, different levels of government, and the helping professions and non-governmental agencies. The changes that are required to achieve these purposes will entail a fundamental shift in the values of Canadian society, the diminution of pride of separate jurisdictional authority and institutional prerogatives, and a firm spirit of co-operation between different levels of government and between the different helping professions.

The Committee is aware that the required changes will not be easily or readily realized. But there can be no doubt on the basis of our findings that vital ameliorative changes must be made and that assuring these purposes must be the unswerving objective of those concerned with the reform of the law and of upholding the traditional ethics of the helping professions.

In reaching our conclusions, we have done so on the basis of a review of the Canadian law on sexual offences which has been coupled with an empirical assessment of the present situation of the sexually abused child. It is in light of this assessment that each of our major recommendations rests upon a substantial body of evidence. With respect to the substance of our main findings, the Committee believes that their significance is generally clear and unequivocal. We know of no other source for Canada that provides comparable comprehensive information assessed at a national level.

Presented under nine major categories, our recommendations specify the social and legal reforms we believe are required in order to provide better assistance for sexually abused children and to afford young persons better protection from becoming victims of sexual offences and exploitation.

1. **Office of the Commissioner** (Recommendation 1);
2. **Education for Protection** (Recommendation 2);
3. **Reform of the Sexual Offences** (Recommendations 3-17);
4. **Principles of Evidence** (Recommendations 18-27);
5. **Strengthening the Provision of Services** (Recommendations 28-34);
6. **Information Systems** (Recommendations 35-38);
7. **Research** (Recommendations 39-40);
8. **Juvenile Prostitution** (Recommendations 41-48);
9. **Pornography** (Recommendations 49-52).

We believe that the actions we propose are essential and that they are feasible to implement. Several of the changes we call for require the reform of the law and a restructuring of services. By themselves, such changes, if acted upon, will not assure complete protection for all sexually abused children. Their implementation, however, will serve to lessen or remove many of the serious deficiencies that now exist.

In submitting our recommendations, we do so unanimously.

Office of the Commissioner

By focussing on sexual offences against children, the Committee has been able to obtain extensive and detailed information on the relevant legal issues as well as on the wider issues that concern the helping services. The Committee believes that because of its usefulness in putting a wide variety of behaviours under examination, this focus should be retained in the federal government's response to the Committee's findings and recommendations which should be reflected by the involvement of all interested departments and non-governmental organizations.

The Committee acknowledges the indispensable contribution of community and voluntary agencies in affording assistance and protection for sexually abused children. There can be no doubt that in the development and implementation of measures required to afford better protection for these children, the full participation of these services at the local and national levels is required at each stage of the work to be done in carrying out the initiatives for reform which the Committee recommends.

Although the federal government is responsible for the *Criminal Code*, the provincial Attorneys-General are responsible for enforcing its provisions. The federal government provides financial assistance to the provinces for the operation of social and health services and the provincial governments have extensive jurisdictional authority over these services which provide protection for children and youths. Without full co-operation and assistance from provincial and municipal as well as federal government departments, much of the information collected in this Report would not have been obtained. Because of their deep concern with these issues and their jurisdictional responsibilities, it is essential that provincial governments take an active part in responding to the Committee's findings and recommendations.

The problem of child sexual abuse in Canada is so pervasive and deep-rooted that in its response to our recommendations, we believe that the Government of Canada must establish a means to deal adequately and on a co-ordinated basis with these issues. We believe that the problems identified and documented in the Report are too far-reaching and complex to be dealt with exclusively or effectively by one or two federal departments or by one level of government alone. What is required to achieve what must be done is an administrative mechanism which retains the perspective of all dimensions of the problem and which can actively initiate and co-ordinate the reforms that are required. In our judgment, it is unlikely that this work can be achieved within the existing organization of public services.

In the course of its review, the Committee found numerous instances in relation to the occurrence of sexual offences where important recommendations made by distinguished advisory commissions had never been implemented. Over a period of several decades, federally appointed commissions have

advocated major reforms in the assembling of criminal statistics and that comprehensive national research be mounted in relation to sexual recidivism and the management and treatment of convicted sexual offenders. Such proposals were cogently presented in the 1938 *Report of the Royal Commission to Investigate the Penal System of Canada* (Archambault Report).[1] They were subsequently reiterated in: the 1956 *Report of a Committee Appointed to Inquire into the Principles and Procedures followed in the Remission Service of the Department of Justice* (Fauteux Report);[2] the 1958 *Report of the Royal Commission on the Criminal Law Relating to Criminal Sexual Psychopaths* (McRuer Report);[3] and the 1969 *Report of the Canadian Committee on Corrections* (Ouimet Report).[4]

None of the recommendations of these advisory bodies pertaining to reform of criminal statistics involving the listing of sexual offences or the undertaking of comprehensive long-term research on sexual recidivism, the treatment of sexual offenders and the efficacy of different sentencing practices was subsequently acted upon. Consequently, there is now no information available at the national level concerning the ages and sexes of victims of sexual offences. Likewise, it is unknown how many reported cases there are of girls and women who have been sexually assaulted or who have been the victims of buggery or incest. While the 1938 Report of the *Archambault Commission* and those of later inquiries called for research on sexual recidivism, prior to the appointment of this Committee, no such studies had been published providing information assembled from federal and provincial correctional services.

In submitting their recommendations, it appears that previous federal inquiries assumed that the existing structure of government services had the requisite capacity to respond effectively to the initiatives being proposed. For whatever reasons, it is evident that this has not been the case. In relation to numerous significant issues pertaining to sexual offences, many of the recommendations of these earlier inquiries have consistently been shelved, forgotten or ignored. Without venturing to act upon specific recommendations, it has on occasion been concluded that it is not feasible to do so. The Committee's research on sexual offences against children and sexual recidivism, amongst other issues studied, does not support this assumption.

The work of government is compartmentalized into departments, each having its own priorities, its limited scope of authority and its resources assigned to fulfill specific activities. As noted in the 1969 *Ouimet Report*, the organization of government services functions to constrain severely the capacity of particular departments operating at one level of government in dealing effectively with complex social problems whose potential resolution requires close and continuous co-operation within and between different levels of government and with non-governmental agencies. In this regard, there may be a mismatching between the duties which particular departments may be properly expected to fulfill and their actual capacity to be able to respond effectively to problems for which they have partial authority to deal with and limited resources to do adequately what is required. The 1969 *Ouimet Report*

concluded that, in some instances, action on the recommendations of advisory bodies may not be taken, since to have done so, would have provided information critical of the operation of existing services.

In the Committee's view, the pride of jurisdiction should not take precedence over the need to implement reforms which, were they acted upon, might afford better protection against sexual offences for Canadian children and youths. Accordingly, we believe that the Government of Canada should establish an Office of the Commissioner, reporting directly to the Office of the Prime Minister, having the assigned authority to review the recommendations of this Report, and serving as the means of initiating and co-ordinating the reforms which are called for. Assigned its own budgetary allocation for these purposes, the Office of the Commissioner would function to initiate and co-ordinate the work of various federal departments, work in conjunction with related departments at the provincial level, and establish the means requisite to assure the full participation of non-governmental agencies in these activities.

Where special needs have been recognized in the past, the Government of Canada has established special bodies which are assigned responsibility to respond to these issues. On the basis of our findings, there can be no doubt that the establishment of an Office of the Commissioner is warranted in order to initiate and marshall the efforts of all levels of government and non-governmental agencies, having as their common purpose, the provision of services required to reduce and prevent child sexual abuse.

Recommendation 1

The Committee recommends that, in order to provide an effective network of services for the assistance and protection of sexually abused children and youths, the Government of Canada establish an Office of the Commissioner reporting directly to the Office of the Prime Minister having assigned responsibility:

1. **To implement the Committee's proposals for social and legal reform.**
2. **To establish, in conjunction with non-government agencies and the provinces, the most useful mechanism for co-ordinating and integrating public and private efforts for providing these services.**

Education for Protection

Sexual offences are committed so frequently and against so many young Canadian children that there is an evident and urgent need to afford victims better protection. The Committee's findings show the compelling nature of the fears and stigma associated with having been a victim of sexual assault. Many young children do not know where to turn for help, particularly when the offence is committed by a family member or someone whom they know.

In accounts received by the Committee from persons who had been sexually abused as children, an eloquent appeal was made that children in the

future should know better how to protect themselves from these risks. In order for a child to seek help or give evidence, pre-requisites are the recognition that an act was wrong and the strength to overcome the fears and shame involved in telling others about these acts. The Committee believes that as part of a broader program of education, children and youths should be better informed about the risks, and that this educational program should also be undertaken as a preventive measure intended to educate and dissuade potential sexual offenders from committing these acts.

In the recommendations that follow, the Committee calls for changes in legislation intended to provide an essential legal framework to afford better protection for children and youths. Taken by themselves, these measures, however, would be insufficient to contain this widespread problem.

Recommendation 2

The Committee recommends that one of the principal responsibilities of the program that is established in conjunction with the Office of the Commissioner co-ordinating federal, provincial and non-governmental agencies' initiatives be concerned with the development and implementation of a continuing national program of public education and health promotion focussing specifically on the needs of young children and youths in relation to the prevention of sexual offences and affording better protection for children, youths and adults who are victims.

In developing a national program of public education and health promotion focussing on the needs of sexually abused children and youths and the means whereby they may be better protected, the Committee believes that the Office of the Commissioner, in conjunction with federal and provincial ministries and non-governmental agencies, should actively seek the co-operation of the media, the National Film Board of Canada, and provincial educational radio and television services, amongst others, in order to develop programs pertaining to these issues which can be widely disseminated across the country. Few such resources are now available that are geared to serve these purposes.

Reform of the Sexual Offences

Early in the Committee's work, it became apparent that a reformulation of the sexual offences in the *Criminal Code* was required in order to provide young persons with more effective protection against sexual abuse and exploitation. Although the Committee's proposed reformulation has drawn upon aspects of the former and existing law, it constitutes a major departure from the traditional classification of sexual offences as they relate to children and youths. That young persons are particularly vulnerable to sexual abuse and exploitation makes the adoption of a special legal framework in this context both necessary and desirable. As one commentator has observed:

> The development of human sexuality is a gradual process. Its full realization presupposes the achievement of an equilibrium between body and spirit, between physical growth and mental and emotional maturation. Our society believes, and justly so, that the law must protect those who have not yet attained full sexual autonomy or who have not yet achieved this equilibrium. Children must therefore be protected from sexual exploitation and corruption until they have arrived at a degree of maturity which will enable them to foresee the consequences of their acts and take important personal decisions with full and clear appreciation of the facts, or at least until they come to the age at which that degree of maturity should be presumed.[5]

The various sexual offences in the *Criminal Code* and their deficiencies from the standpoint of child protection are extensively reviewed in the Report. The Committee's recommendations for the reform of this area of the law, summarized in Table 3.1, seek to redress these deficiencies and provide a legal framework which, in the Committee's judgment, is clearly and rationally related to the protective ends that the criminal law should serve. In proposing reforms to the criminal law of sexual offences against young persons, two basic questions present themselves: What conduct should be made criminal?; and What sentences should be available against persons who commit these crimes?[6] The characteristics of sexual acts involving young persons which make such acts unacceptable, and thus properly the function of the criminal law to denounce and punish when the offender is of the age of criminal responsibility, fall into five broad (and often overlapping) categories:[7]

- *The nature of the sexual act engaged in*, for example, buggery with a 14 year-old;
- *The age of the child with whom the sexual act is engaged in*, for example, sexual touching of an eight-year old's genitals;
- *The young person's lack of consent to the sexual act*, for example, the sexual assault of a 17 year- old girl;
- *The legal or social relationship between the offender and the young person*, for example, acts of oral sex involving a teacher and an 11 year-old pupil; and
- *The harms which may be incurred by the child as a result of the sexual conduct*, for example, physical and emotional injuries, pregnancy and the risk of contracting a sexually transmitted disease.

The Committee's proposed reformulation is grounded on an assessment of these five considerations, in relation both to the types of sexual conduct involving young persons that should be proscribed, and the maximum sentence that should be available depending on the offence committed. The Committee believes that the appropriateness of providing legal defences for an accused must be viewed in relation to the seriousness of his or her conduct. Where an accused's conduct (for example, sexual intercourse by a 16 year-old male with a 14 year-old girl) may result in substantial physical and emotional harms to his sexual partner, it is not appropriate to exempt him completely from the prohibition against this conduct, either because of his age or because of his mistaken perception of his partner's age. These facts should be taken into account in sentencing.

Table 3.1

Committee's Recommendations Concerning the Major Sexual Offences

Committee's Recommendations	Current Criminal Code Provision
1. Repeal one year limitation on prosecutions (section 141 and section 168(2)).	Section 141 affects sections 151 (seduction of female 16 or 17), 152 (seduction under promise of marriage), 153(1)(b) (sexual intercourse with female employee under 21), 166 (parent or guardian procuring defilement), 167 (owner or manager of premises permitting defilement of female under 18), 168 (corrupting children). Section 168(2) affects only section 168.
2. Reduce maximum sentence 146(1) offence to less than 14 years.	Sexual intercourse with a female under 14. Maximum sentence life imprisonment.
3. Repeal sections 146(2)(b) and 146(3).	146(2) sexual intercourse with female 14 and under 16. 146(2)(b) female must be of previously chaste character. 146(3) court may find accused not guilty if he is not more to blame.
4. Amend section 140 to provide consent by person under 16 not a defence.	Consent by person under 14 not a defence to a charge under section 146 (sexual intercourse with female under 14, and with female 14 and under 16).
5. Repeal section 147.	No male person under 14 deemed to commit section 146 (sexual intercourse with female under 14, and with female 14 and under 16) or section 150 (incest) offence.
6. Amend section 150 to provide section does not apply to victim.	Section 150(3) provides court not required to impose punishment on female victim convicted of incest.
7. Repeal section 151.	Seduction of female 16 or 17. Maximum sentence 2 years' imprisonment.
8. Repeal section 152.	Seduction under promise of marriage. Maximum sentence 2 years' imprisonment.
9. Repeal section 153(1)(a) and replace with abuse of position of trust offence.	Sexual intercourse with step-daughter, foster daughter, or female ward.
10. Repeal section 153(1)(b) and replace with abuse of position of trust offence.	Sexual intercourse with female employee under 21.

Table 3.1 (continued)

Committee's Recommendations Concerning the Major Sexual Offences

Committee's Recommendations	Current Criminal Code Provision
11. Repeal section 154.	Seduction of female passenger on board a vessel.
12. Amend buggery offence (section 155) to apply only where female complainant under 18 not wife of accused, and where male complainant under 18. Maximum sentence imprisonment for less than 14 years if complainant under 14, 5 years if complainant 14 and under 18.	Buggery applicable to all ages except for consensual acts in private between husband and wife or any two persons aged 21 or over. Maximum sentence imprisonment for 14 years.
13. Make bestiality (section 155) a summary conviction offence. Create new offence of compelling another person to engage in bestiality, and engaging in bestiality in presence of or with another person under 18. Maximum sentence imprisonment for less than 14 years.	Maximum sentence 14 years.
14. Repeal section 157.	Gross indecency. Maximum sentence 5 years' imprisonment.
15. Repeal section 158.	Exception to sections 155 (buggery) and 157 (gross indecency) re consensual acts in private between husband and wife or any two persons aged 21 or over.
16. Repeal section 175(1)(e) and create separate offence of person convicted of any sexual offence found loitering near school ground, etc. Summary conviction offence.	Vagrancy (convicted sexual offender loitering near school ground, etc.). Summary conviction offence.
17. Repeal less than 3 years older exception in section 246.1(2).	Consent by complainant under 14 not a defence to sexual assault offences unless accused less than 3 years older than complainant.
18. Repeal Section 253.	Communicating venereal disease.
19. Create new offence of abuse of position of trust by sexual touching of person under 18. Maximum sentence 10 years' imprisonment.	

Table 3.1 (concluded)

Committee's Recommendations Concerning the Major Sexual Offences

Committee's Recommendations	Current Criminal Code Provision
20. Create new offence of touching persons under 16 in the genital or anal region for a sexual purpose. Maximum sentence imprisonment for less than 14 years if complainant under 14, 10 years if complainant 14 and under 16.	
21. Create new offence of inviting, for a sexual purpose, the touching of another by a person under 14. Maximum sentence 5 years' imprisonment.	
22. Create new offence of exposing genitals to person under 16 for a sexual purpose. Summary conviction offence.	

Vague offences have had the undesirable result that the same behaviour can be charged under three or four different sections of the *Criminal Code*, each with a different maximum sentence and different evidentiary requirements. This situation has resulted in confusion and unnecessary complexity in an area of the law which, to the greatest extent possible, should be clear and straightforward.

The 1983 Report on *Sentencing Practices and Trends in Canada* commissioned by the federal Department of Justice makes the assumption that the sentences imposed are logically related to the behaviours subsumed in the offences.[8] The Committee's findings, documented in the National Police Force Survey and the National Corrections Survey, clearly indicate that, in relation to sexual offences against children and youths resulting in charges being laid and sentences imposed, this assumption is invalid.

The Committee believes that the answer is not to develop a separate sentencing section of the *Criminal Code*. The evidence given in this Report leaves no doubt that the existing provisions in the *Criminal Code* must be restructured based on a rationale that accounts for the specific sexual acts committed and that connects the offences and sentences in a rational manner. The existing system of penalties is both irrational in its structure and in its application.

In the Committee's judgment, treating children differently from adults and, more specifically, treating some sexual acts with children differently from other, dissimilar sexual acts, would have a number of real advantages for child protection. First, it would better educate the public about the seriousness with

which the law regards inappropriate sexual behaviour with children by identifying more explicitly those behaviours that are completely unacceptable and, if perpetrated, will render the offender liable to severe punishment. It would thus sharpen the deterrent edge of the criminal law. Second, such an approach would assist the police and the Crown in their charging practices, by giving them objective facts to look for and to garner evidence on, for example, the age of the child and the sexual act engaged in, rather than requiring them (as at present) to make subjective value judgments, such as whether the act was "grossly indecent". Third, it would provide a more coherent and streamlined criminal law, a criminal law based on sound policy and reflecting an appreciation of the wide range of qualitatively different behaviours which are subsumed within the vague label, "child sexual abuse and exploitation".

The Committee's proposed reforms are complementary to the sexual assault offences which became law in January, 1983. These new offences deal primarily with incidents in which one of the parties did not consent to the sexual touching, or in which the offender used threats or violence in perpetrating a sexual assault. They do not, however, adequately address the wide range of sexual behaviours involving young persons which should be proscribed for reasons independent of the victim's lack of consent or the offender's use of threats or violence. The absence of the victim's consent is only one of several policy bases for prohibiting certain forms of sexual conduct involving a young person. The offences proposed by the Committee proscribe behaviours with children and youths which are unacceptable for reasons largely independent of the issues of "consent" and "assault", namely, the age of the young person; the nature of the sexual act engaged in; the abuse of a position of legal or social trust by the offender; and the harms which may be incurred by the young person as a consequence of the sexual act.

Sexual Intercourse with Girls Under the Age of 16

Under current Canadian law, there is an absolute prohibition against a male person having sexual intercourse with a female person who is not his wife and who is under the age of 14 years. It is no defence that the accused believes that she is 14 or older and an accused found guilty of this offence is liable to imprisonment for life.[9] Consensual sexual intercourse involving girls 14 or 15 is, however, subject only to a qualified form of prohibition: the prohibition applies only where the female is "of previously chaste character", and the court may find the accused not guilty if the evidence does not show that the accused was more to blame than the female for the sexual behaviour.[10] Obviously, the qualification largely defeats the purpose of this offence.[11]

The substantial risks of contracting a sexually transmitted disease incurred by girls who engage in sexual intercourse with their partners, and the associated medical complications, are extensively reviewed in the Report. The findings indicate that young girls who become pregnant are recognized to be in

a high risk category and require specialized care and medical attention. These girls are subject to greater medical hazards throughout their pregnancy than are pregnant women, and are more likely to deliver prematurely and to have babies who are themselves in a high risk category. Moreover, therapeutic abortions performed on young girls carry a higher than normal risk of complication at all stages of gestation.

In light of these considerations, the Committee strongly considers that the absolute prohibition against a male person having sexual intercourse with a female person who is not his wife and who is under the age 14 years (currently contained in section 146(1) of the *Criminal Code*) should be retained. The Committee also concludes on the basis of its findings and pending more complete information on the attendant health risks of sexual intercourse for young females that the prohibition in section 146(2) against sexual intercourse with female persons who are 14 or 15 years of age should also be retained. The provisions in section 146(2)(b) (complainant must be of previously chaste character) and section 146(3) (court may find accused not guilty if he is not more to blame) are, in the Committee's judgment, inappropriate to the offence and should be repealed. Section 140 should be amended accordingly by substituting the age of 16 years for the age of 14 years.

The Committee agrees with the following statement of the English *Policy Advisory Committee on Sexual Offences:*

> We do not think that any advantage would be gained if the law disabled itself from dealing with all young men below a certain age or near in age to the girl involved .... [W]hether young men should be prosecuted for the offence and, if convicted, how they should be disposed of, are more appropriately regarded as matters for the exercise of discretion, of the police on the one hand and of the trial judge on the other.[12]

The Committee's findings obtained in the National Police Force Survey and its review of sentencing practices strongly suggest that, in general, this police, prosecutorial and judicial discretion is being appropriately exercised in Canada.

The Committee is strongly of the opinion that the principal means of providing protection is through the provision of information necessary to make young persons and their parents thoroughly familiar with the higher risk involved in the pregnancy of young girls and with the possible consequences of sexually transmitted disease. Without the effective delivery of this information, full use will not be made of the deterrent value of section 146. On the other hand in the judgment of the Committee, removing the criminal law prohibition against sexual intercourse with young girls from a substantial proportion of their partners who are close in age (which is proposed in Bill C-53 and in the "Working Paper") would do nothing to protect these girls from the medical risks of pregnancy and sexually transmitted disease, and may even have the unintended result of encouraging their exploitation. It is for these reasons that we believe that special statutory protection is warranted in the case of young girls. There will seemingly always be men, young and old, who do not accept

that it is a wrong to have sexual intercourse with young girls. For these men, detection and prosecution may act as a deterrent.[13]

With respect to the maximum sentence for these offences, the Committee considers that a maximum sentence of less than 14 years' imprisonment is an adequate sanction in relation to the section 146(1) offence, and that the current maximum of five years' imprisonment in relation to the section 146(2) offence should be retained. These sentencing maxima would give the sentencing judge the option of imposing a discharge pursuant to section 662.1 of the *Criminal Code*, where the judge "considers it to be in the best interests of the accused and not contrary to the public interest" in all the circumstances of the case.

Recommendation 3

The Committee recommends that:

1. **Section 146(1) of the *Criminal Code* be retained, and that the maximum punishment for this offence be changed to a sentence of less than 14 years' imprisonment.**
2. **Section 146(2) be retained, but that sections 146(2)(b) and 146(3) of the *Criminal Code* be repealed.**
3. **Section 140 of the *Criminal Code* be amended to specify the age of 16 years instead of the present age of 14 years.**
4. **Section 147 of the *Criminal Code*, which states that no male person shall be deemed to commit an offence under section 146 while he is under the age of 14 years, should be repealed. This provision is a legal anachronism and no longer serves any useful purpose. The relevant age should be the general age of criminal responsibility, which is set at 12 in the *Young Offenders Act*.**

Incest

The Committee's extensive survey findings on incest and its study of the genetic risks to the off-spring of incestuous unions are presented in the Report. These findings do not support the contention[14] that the offence of incest should be removed from the *Criminal Code*. That there are considerable genetic risks to the off-spring of incestuous unions is a contributing, though not the principal, reason for retaining this offence.

The Committee's research findings on incest in Canada, particularly in relation to father-daughter incestuous unions, strongly bear out the conclusions of English researchers in this context:

> We are satisfied from the evidence that we have examined . . . that incest can have ill-effects of a psychological and social kind on the immediate parties and on other members of the family. This is particularly so in the case of incest between father and dependent daughter, which most people would consider to be an abuse of parental relationship. In particular, children may as a

result of incestuous relationships find their capacity to form normal emotional and social relationships impaired. We do not believe that evidence of such ill-effects is inconsistent with the view that incest tends to occur where the familial relationships are already unsatisfactory, or is vitiated by evidence that some children suffer no apparent harm from an incestuous relationship. If it is granted that incest may result in this kind of harm, the problem is to know how best to prevent or minimize it."

The Committee acknowledges that difficulties may be encountered by the affected family where the father is prosecuted for incest. It should be emphasized, however, that criminal prosecutions for incest constitute only a small proportion of all legal proceedings relating to incest, most of which take place in the context of civil, child welfare proceedings. The criminal law typically is used only as a last resort, and as a decisive means of ending the incestuous relationship and of protecting other family members who may be at risk. The incest offence in the *Criminal Code* plays an important part in the efforts by social agencies to secure the safety and well-being of young incest victims; the repeal of this offence would make their work more difficult. Closer co-operation between the police, the Crown and child welfare authorities will help to ensure that prosecuting a father for incest is genuinely in the best interests of the victimized child and her family. In the Committee's judgment, the question is not whether such an option should be available, but rather, in what circumstances this option should be pursued. This latter question is best left to the informed and collective judgment of child welfare authorities, the police and the Crown, taking into account all the circumstances of the particular case.

With respect to sexual intercourse between adults who are within the prohibited degrees of consanguinity specified in section 150 of the *Criminal Code*, the almost barren judicial record in Canada in this respect indicates that police forces and Crown attorneys are aware of the inappropriateness of bringing prosecutions in all cases of incest between genuinely consenting adults. It should be noted, however, that justified prosecutions for incest involving adult parties have occurred in Canada, and this fact buttresses the argument for retaining the incest offence in its current form. In one prosecution for incest, the complainant was the accused's 33 year-old daughter; the evidence clearly disclosed that the accused father had selfishly used his parental ascendancy over his daughter in order to gratify his sexual urges. The incestuous relationship was ended as a result of police intervention, at the anxious request of the daughter.

The Committee is not prepared to declare, as the *Law Reform Commission of Canada* has suggested,[16] that, "on principle", incest between "consenting" adults "ought no longer to fall within the purview of criminal justice".[17] On the contrary, the Committee's extensive research findings on father-daughter, brother-sister and grandfather-granddaughter incest compel the opposite conclusion. With respect to the elements of the incest offence, the Committee considers that the offence should be restricted, as at present, to acts of sexual intercourse between persons within the prohibited degrees of consanguinity specified in section 150 of the *Criminal Code*. The Committee is also of the

view that the term "incest" should be retained, since by it the nature of the prohibited conduct is generally understood by the community, which is concerned to take effective measures to stop it.[19]

Recommendation 4

The Committee recommends that:

1. **The offence of incest in section 150 of the *Criminal Code* should be retained, with section 150(3) to be amended to provide that section 150 does not apply to any person who has sexual intercourse under restraint, duress or fear of the person with whom he or she has the sexual intercourse.**

2. **Section 147, which states that no male person shall be deemed to commit an offence under section 150 while he is under the age of 14 years, should be repealed. The relevant age should be the general age of criminal responsibility.**

Age of Sexual Autonomy

Under current Canadian law, two persons must be 21 or older to be assured that, apart from incest, none of their private consensual sexual conduct constitutes a criminal offence. Buggery (sexual intercourse *per anum* by a male person with a male or a female person) is currently prohibited by section 155 of the *Criminal Code*, and gross indecency (a wide range of homosexual and heterosexual behaviours) with another person is prohibited by section 157. Section 158 provides that the above offences do not apply to any consensual act committed in private between a husband and his wife, or any two persons, each of whom is 21 or older. In light of developments since 1969 when the exception from criminal liability in section 158 was introduced, the Committee considers that 18 would be a more appropriate age of autonomy for these types of conduct. The Committee's conclusion is supported by two important considerations:

1. The age of 18 is the age of legal majority in most Canadian provinces. The Committee considers this an important factor in determining at what age the criminal law should cease to regulate private, consensual sexual acts between persons. In the view of the Committee, a person who is deemed to be an adult for many important social and legal purposes should be able to engage in private consensual sex with another adult, without fear of incurring a criminal sanction.

2. The Committee's findings from the National Police Force Survey indicate that, if the age of "full consent" to heterosexual or homosexual behaviour were lowered from 21 to 18, this would not affect police charging practices to any appreciable extent. The Committee found that, where parties to a private, consensual homosexual or heterosexual encounter were 18 or older but not yet 21, the police were very seldom called upon to intervene.

There is considerable medical opinion that sexual orientation is settled by age 16. There is also opinion to the contrary. The Committee is concerned that

legal protection be retained where it may be useful to young persons. The Committee would therefore not reduce the age of sexual autonomy to 16 in the absence of persuasive evidence that such a reduction would pose no risk to developing sexual behaviour.

Should the new act-specific offences against children recommended by the Committee be implemented, it would not be necessary to retain the offence of gross indecency for persons under 18. Nor would it be necessary in the case of persons 18 or older, since the offence of indecent act in section 169 of the *Criminal Code* would apply to indecent behaviours in a public place in the presence of one or more persons, and in any place, with intent thereby to insult or offend any person.

The Committee considers that an act of buggery on a person under 18, even with that person's consent, is a sufficiently serious and distinctive behaviour to warrant a separate section in the *Criminal Code*. However, the Committee would continue the present exception where the act is between a husband and his wife with her consent. The Committee recommends that a sentence of imprisonment for less than 14 years be available in cases of buggery where the act is committed on a person under the age of 14. Where the act is committed on a person who is 14 years of age or more and under 18, the maximum punishment should be imprisonment for five years. Non-consensual buggery, including acts committed by a husband on his wife or between persons 18 years of age or older can be charged as sexual assaults under section 246.1, section 246.2, or section 246.3 of the *Criminal Code*, depending on the circumstances. The present buggery offence in section 155 of the *Criminal Code* would be repealed, and so would section 158 (exception for consensual acts in private between husband and wife or any two persons aged 21 or older).

Recommendation 5

The Committee recommends that section 155 of the *Criminal Code* be amended to provide that:

1. **Every male person who performs an act of buggery on a female person who is not his wife and who is under the age of 18, or on a male person who is under the age of 18, is guilty of an indictable offence and is liable to:**

   (i) **imprisonment for less than 14 years, if the person on whom the act is committed is under the age of 14, or**

   (ii) **imprisonment for 5 years, if the person on whom the act is committed is 14 years of age or more, and is under the age of 18 years.**

2. **It is no defence to a charge under this section that the person on whom the act was committed consented to the act, or that the accused believed such person to be 18 years of age or older.**

Bestiality

The Committee considers that the offence of bestiality (sexual intercourse by a male or female person in any manner with an animal) should be retained in the *Criminal Code*,[19] particularly as such conduct may involve the induced or coerced participation of another person.[20]

In the National Corrections Survey, one in 100 convicted child sexual offenders had involved victims in acts of this kind. Where an act of bestiality occurs in the absence of other aggravating factors, a maximum sentence of six months' imprisonment is an adequate sanction. Where, however, a person is induced or coerced to participate in an act of bestiality, or an act of bestiality involving another person takes place in the presence of a young person, the Committee considers that a maximum sentence of 14 years' imprisonment (which is the current maximum for this offence[21]) should be available.

Recommendation 6

The Committee recommends that the *Criminal Code* be amended to provide that:

1. **Every one who commits bestiality is guilty of an offence punishable on summary conviction.**
2. **Notwithstanding section (1) above, every one who**
   (i) **incites, counsels, procures or compels another person to engage in an act of bestiality, or**
   (ii) **engages in an act of bestiality in the presence of, or with the participation of, another person who is under the age of 18 years, is guilty of an indictable offence and is liable to imprisonment for less than 14 years.**
3. **It is no defence to a charge under this section that the accused believed the person to be 18 years of age or older.**

Genital and Anal Acts Involving Persons Under the Age of 16

Under the criminal law reforms recommended by the Committee:

Children under the age of 14 would receive absolute legal protection against any form of sexual touching by another person. This would result from the Committee's recommendation (discussed later) that section 246.1 of the *Criminal Code* be amended to provide that the consent of a person under 14 will not, under any circumstances, be a defence for an accused charged with a "sexual assault" offence in respect of such young person;

Girls under the age of 16 would receive absolute legal protection against acts of vaginal sexual intercourse with a male person; and

Young persons of both sexes under the age of 18 would receive absolute legal protection against acts of buggery (anal intercourse) committed on them by a male person.

Accordingly, in the absence of special legal provisions, a young person of 14 years of age or older is capable of giving a valid consent to some forms of sexual conduct with another person. In the the judgment of the Committee, the most serious forms of genital and anal sex involving a person under the age of 16 years warrant special attention, and should be excluded from the class of sexual conduct to which a young person under 16 is capable of giving a valid legal consent. Most Canadian provinces and territories allow young persons who are age 16 (and even younger) to marry with parental consent. It would therefore be anomalous to make such a prohibition applicable to young persons 16 or older. In certain circumstances, such conduct involving a person 16 or 17 years of age would be caught by the offence of "abuse of a position of trust", an offence the Committee recommends later. On the other hand, where such conduct is clearly non-consensual, it would of course constitute a "sexual assault" under sections 246.1, 246.2 or 246.3 of the *Criminal Code*, depending on the circumstances.

Such an offence would cover such acts as fellatio, cunnilingus and vaginal or anal penetration with a finger or object where they are committed on a young person under the age of 16, and which go beyond normal adolescent "petting". In the Committee's opinion, it would constitute a more effective and easily understood prohibition than the current offence of "gross indecency", which should be repealed. Depending on the circumstances, the Crown could charge either this offence or one of the "sexual assault" offences in sections 246.1, 246.2, and 246.3 of the *Criminal Code*.

Recommendation 7

The Committee recommends that the *Criminal Code* be amended to provide that:

1. **Every one who, for a sexual purpose, touches a young person in the genital or anal region with any part of his or her body or with any object, is guilty of an indictable offence and is liable to:**
   - **(i) imprisonment for less than 14 years, if the complainant is under the age of 14 years; or**
   - **(ii) imprisonment for 10 years, if the complainant is 14 years of age or older, and is less than 16 years of age.**
2. **In this section, "young person" means a person who is under the age of 16 years.**
3. **It is no defence to a charge under this section that the young person consented to the activity that forms the subject matter of the charge, or that the accused believed that the young person to be 16 years of age or older.**

Invitation Cases

In Chapter 12, *The Sexual Offences*, it is noted that the legal concept of an "assault" causes difficulty where an accused, for a sexual purpose, invites a child to touch him or her (for example, to masturbate him or her), but neither

touches nor threatens to touch the child in return. In these circumstances, Canadian courts have held that, since there is no assault, the question of indecent or sexual assault does not arise.[22] In the Committee's judgment, offensive sexual conduct of this kind which involves children under the age of 14 years should be specifically prohibited in the *Criminal Code*.[23]

Recommendation 8

The Committee recommends that the *Criminal Code* be amended to provide that:

1. **Every person who, for a sexual purpose, invites, counsels, incites or causes a child:**

   (i) to touch any part of such person's body; or

   (ii) to touch any part of another person's body;

   is guilty of an indictable offence and is liable to imprisonment for 5 years.

2. **In this section,**

   (i) "child" means a person under the age of 14 years;

   (ii) "to touch" includes both direct and indirect physical contact.

3. **It is no defence to a charge under this section that the accused believed the child to be 14 years of age or older.**

Abuse of Position of Trust

The Committee's findings from the National Population Survey and the National Police Force Survey indicate that (excluding acts of genital exposure) about one in four of the sexual offences against young persons was committed by persons either prominent in the child's life or by persons to whom the child was particularly vulnerable. Offenders in this group comprised a wide range of persons in a typical child's life: fathers, legal guardians, brothers, uncles, other blood relatives, boarders, baby-sitters, teachers, employers and youth group leaders. The common denominator linking these different classes of offenders was that, by reason of their biological, legal or social relationship to their young victims:

1. Their opportunities for sexually abusing the children "at hand" were greater than ordinary.
2. Correspondingly, their young victims were particularly vulnerable to them.
3. By so acting, these offenders breached the vital position of trust reposed in them due to their special relationship to their young victims.

The criminal law has an important role to play in punishing and, it is hoped, deterring violations of these familial and trust relationships. In the Committee's judgment, this role must be made more explicit in relation both to the sentencing of sexual offenders who abused a position of trust in committing

an offence against a young person, and to the substantive sexual offences in the *Criminal Code*.

Sentencing Considerations. Just as the youthful age of a sexual offender should, in general, be regarded as a mitigating factor in sentencing, the violation of a position of familial or social trust in perpetrating a sexual offence against a young person should, in the Committee's judgment, be considered an aggravating factor at the sentencing stage. The principles of specific and general deterrence are particularly relevant to the sentencing of persons who have the greatest opportunities for offending and who selfishly exploit those opportunities. In the context of sexual offences against young persons, these principles have become an accepted part of Canadian sentencing practice.[24] The Committee strongly endorses this development in Canadian sentencing law and the vital social policy it serves to underscore.

Abuse of Position of Trust. Implicit in the recommendations put forward is the Committee's belief that normal adolescent "petting" should not be the subject of criminal sanctions. Nor does the Committee consider that, for example, sexual intercourse between a 17 year-old and his 16 year-old girlfriend should be made a criminal offence, in the absence of exploitative or assaultive circumstances.

The situation is quite different, however, where a 40 year-old teacher induces his 17 year-old pupil to engage in sexual intercourse with him, or where a 30 year-old male engages in acts of oral sex with his 16 year-old nephew. In circumstances such as these, the Committee considers that the application of criminal sanctions against such adults is fully warranted. The vital policy served by such an offence is deterrence: the deterrence of those who are in a special position of social trust towards children and who selfishly exploit that position of trust for the purposes of gratifying their own sexual appetites. A classic example of the criminal law's response to abuses of trust is the offence of incest. The incest offence, however, is restricted to persons who are related by blood and applies only where an act of sexual intercourse takes place between specified blood relations (for example, sexual intercourse between a father and his daughter).

The findings presented in this Report reveal that young persons are particularly vulnerable to a wide range of persons in their lives (for example, uncles, teachers, baby-sitters, youth group leaders) and that this vulnerability is not explicitly recognized by the criminal law. In place of the under-inclusive and haphazard provisions directed at step-fathers, foster fathers and male guardians (section 153(1)(a)), employers (section 153(1)(b)) and "owners or masters of vessels" (section 154), the Committee considers that more comprehensive protection must be provided against such abuses of trust, protection more in keeping with the realities of modern social life. We believe that this protection must apply both to a wider range of relationships than has traditionally been recognized and to abuses of trust that involve either sexual intercourse or other forms of sexual touching.

In the judgment of the Committee, only by recognizing and re-affirming the total unacceptability of these abuses of trust can the criminal law provide optimal protection for young persons against those persons to whom they are most vulnerable.

Recommendation 9

The Committee recommends that the *Criminal Code* be amended to provide that:

1. **Every one who is in a position of trust towards a young person and who commits a sexual touching with, on, or against such young person is guilty of an indictable offence and is liable to imprisonment for 10 years.**
2. **In this section, "young person" means a person under the age of 18 years.**
3. **In this section, "a sexual touching" includes both direct and indirect physical contact.**
4. **It is no defence to a charge under this section that the young person consented to the activity that forms the subject-matter of the charge, or that the accused believed the young person to be 18 years of age or older.**
5. **Without restricting the generality of the phrase "position of trust", where the accused, at the time of the offence, stood in any of the following relationships to the young person, he or she shall be conclusively deemed to have been in a position of trust towards such young person:**

- **parent**
- **step-parent**
- **adoptive parent**
- **foster parent**
- **legal guardian**
- **common-law partner of child's parent, step-parent, adoptive parent, foster parent, or legal guardian**
- **grandparent**
- **uncle, aunt**
- **boarder in young person's home**
- **teacher**
- **baby-sitter**
- **group home worker**
- **youth group worker**
- **employer**

Acts of Genital Exposure

Given the sheer prevalence of acts of genital exposure against children documented in the national surveys, the Committee considers that this form of offensive behaviour should be classified separately and distinctly in the *Criminal Code*. Acts of exposure constitute the largest single category of all types of sexual offences committed against children and youths. In the National Population Survey, one in five females and one in 11 males reported that they had been victims of acts of exposure, and of sexual offences known to the police,

where girls were victims, about two in five had experienced acts of exposure, while in incidents involving boys, about one in seven had been exposed to by another male.

Where such an act is preceded or accompanied by an assault on another person, the offender might be liable to separate and cumulative criminal charges. Other forms of social nuisance or public indecency would be covered separately by section 169 of the *Criminal Code*.

Recommendation 10

The Committee recommends that section 169 of the *Criminal Code* be retained and that the *Criminal Code* be amended to provide that:

1. **Every one who, for a sexual purpose, exposes his or her genitals to a young person is guilty of an offence punishable on summary conviction.**
2. **In this section, "young person" means a person who is or, in the absence of evidence to the contrary, appears to be under the age of 16 years.**

Loitering by Convicted Sexual Offender

Introduced into Canadian criminal law in 1951, section 175(1)(e) of the *Criminal Code* is a vagrancy offence that was intended to provide a sanction against convicted sexual offenders found loitering or wandering in or near places frequented by children (school ground, playground, public park or bathing area). Due, however, to a drafting error in the most recent re-enactment of this section, the wording in the section does not refer to any sexual offence, and this offence cannot be charged. The Committee believes that the prohibition in section 175(1)(e) should constitute an offence quite separate from any vagrancy offence.

Recommendation 11

The Committee recommends that the *Criminal Code* be amended to provide that:

Every one who having at any time been convicted of any sexual offence under the *Criminal Code* is found loitering or wandering in or near a school ground, playground, public park, or bathing area is guilty of an offence punishable on summary conviction.

Consent by Children

The review of consent in Chapter 12, *The Sexual Offences*, emphasizes the need to amend the *Criminal Code* to include certain general principles relating to consent by children to sexual offences. One is that conduct not involving force, threats or fear of the application of force, fraud or the exercise of authority may nevertheless vitiate the consent of a child under the age of 14

to the commission of any sexual offence. Another is that while provision may be made for a higher age, consent by a child under 14 to the commission of any sexual offence is never a defence to a charge. More particular provisions regarding consent to sexual offences are more appropriate in relation to specific offences and defences. For example, section 140 of the *Criminal Code* provides that consent is not a defence where an accused is charged under section 146 with sexual intercourse with a female under 14, and the Committee has recommended that this protection be extended to include females under the age of 16.

The *Law Reform Commission of Canada's* 1982 Working Paper on criminal law entitled *The General Part: Liability and Defences* states that "the General Part of criminal law provides those general rules and principles relating to the scope and applicability of the detailed criminal laws found in the Special Part", but concludes that "consent has strictly nothing to do with the General Part. On the contrary it finds its context in the Special Part."[25] The examples given above show that consent belongs in both parts: the general principles in the General Part, and the more particular provisions in relation to specific offences and defences in the Special Part. This seems to have been the approach of Sir James Fitzjames Stephen, who included a group of seven consent provisions in his 1877 *Digest of the Criminal Law*[26] [the fourth edition (1887) is one of the sources of our *Criminal Code*], in addition to provisions in relation to specific offences.

The Working Paper's reasons for assigning consent to the Special Part are that non-consent is an element of certain offences such as assault, and that absence of consent, which the prosecution must prove, is not really a defence at all.[27] But the two consent provisions retained from Stephen's *Digest*[28] appeared in Part III of the English *Draft Code* of 1879 (another source of our *Criminal Code*), which "deals with matters of justification and excuse for acts which would otherwise be indictable offences."[29] It is in this less technical sense that defences, including consent, are usually considered.[30] This wider classification included provisions relating to the criminal responsibility of children,[31] and these also appear in the General Part of our *Criminal Code*,[32] together with the consent provisions from the *Draft Code*.[33] The Working Paper would include principles of criminal responsibility regarding children in the General Part of the *Criminal Code*,[34] and it is desirable that the necessary principles relating to consent by children to sexual offences, which are also related to the status of the child, should be included in the same Part.

Recommendation 12

The Committee recommends that in order to provide additional protection for children, the General Part of the *Criminal Code* be amended to provide that:

1. Conduct not involving force, threats or fear of the application of force, fraud, or the exercise of authority may nevertheless vitiate the consent of a person under the age of 14 years to the commission of any sexual offence.

2. While provision may be made for a higher age, consent by a person under 14 to the commission of any sexual offence is never a defence to a charge.

Amendments Introduced in January, 1983

For the reasons extensively documented in the Report, the Committee considers that a legal defence based on the closeness in age of the accused to the complainant, whether in relation to acts of sexual intercourse or in relation to other sexual behaviours, would remove protection from young persons and may even have the unintended result of encouraging their exploitation.

The Committee is strongly of the view that the existing "closeness in age" defence in section 246.1(2) of the *Criminal Code* should be repealed.

Recommendation 13

The Committee recommends that section 246.1(2) of the *Criminal Code* be repealed, and that the following provision be substituted in its place:

Where an accused is charged with an offence under sub-section(1) or section 246.2 or 246.3 in respect of a person under the age of 14 years, it is not a defence that the complainant consented to the activity that forms the subject-matter of the charge.

Repeal of Out-dated Provisions

In furtherance of the Committee's objective of promoting a rational framework of sexual offences which is clearly related to the protective ends the criminal law should serve, the Committee recommends the repeal of several existing sexual offences. Some of these have become outmoded (for example, the offences of "gross indecency" and "seduction under promise of marriage"); others have been extensively reformulated by the Committee in order to provide greater protection for young persons (for example, the offences of buggery and bestiality). The Committee remains unconvinced that the offence of "contributing to juvenile delinquency" in section 33 of the *Juvenile Delinquents Act* does not play a useful role in the protection of young persons. However, the Committee does not consider that, in view of its other recommendations, a new offence based on this offence is either necessary or desirable as a means of regulating sexual misconduct by adults with young persons.

In the Committee's opinion, the implementation of its criminal law recommendations will result in a much more reasonable and economical legal framework for dealing with sexual offences against young persons.

Recommendation 14

The Committee recommends that the following sections of the *Criminal Code* be repealed:

Sections 141 and 168(2)
One year limitation period in which to prosecute certain sexual offences. These sections are no longer applicable in light of the Committee's recommendations, and the Committee is opposed to any limitation period on prosecutions for sexual offences against children.

Section 147
Provision that no male person under 14 shall be deemed to commit an offence under section 146 or section 150.

Section 151
Seduction of female between 16 and 18 years of age.

Section 152
Seduction under promise of marriage.

Section 153
Illicit sexual intercourse with step-daughter, foster daughter or female ward, or with female employee. These behaviours would be prohibited by the Committee's "abuse of position of trust" offence.

Section 154
Seduction of female passenger on board a vessel.

Section 155
Buggery or bestiality. This section has been reformulated by the Committee.

Section 157
Gross indecency.

Section 158
Exception concerning private consensual sexual conduct. This section is no longer necessary in light of the Committee's reformulation of section 155 and recommendation for repeal of section 157.

Sexually Transmitted Diseases

With respect to the elements specified in the section 253 offence in the *Criminal Code*, it appears on clinical grounds that a considerable proportion of persons having sexually transmitted diseases may in fact be unaware that they are infected. In many instances either information is not volunteered by patients concerning the identities of their partners or, where this information is known, it is not listed in clinical records. According to the communicable disease specialists consulted by the Committee, the major obstacle in identifying sexually transmitted diseases is the reluctance by physicians to report these

cases and, in many instances, the provision of treatment without the benefit of laboratory examination of specimen cultures. These non-reporting practices have become so widespread that the enforcement of section 253 of the *Criminal Code* has effectively ceased.

The evidence available to the Committee concerning sexually transmitted diseases contracted by children and youths indicates the serious nature of the health risks associated with these conditions. However, in light of the entrenched and pervasive social and professional forces which militate against the effective application of this law, the Committee recommends that section 253 be repealed. In its place, we recommend: that provincial health regulations and statutes be sharply strengthened; that more effective surveillance and diagnostic criteria be developed; that extensive research be undertaken to obtain necessary information; and that information about the health risks of these diseases be incorporated in the national programs of public education and health promotion recommended by the Committee.

Present provincial regulations and statutes concerning venereal disease control are inadequate. Two of the diseases currently listed, syphilis and gonorrhea, are of serious public health significance. Others constituting serious risks to the health of young children and youths are not considered, for instance, non-gonococcal urethritis and genital infections, genital herpes and certain complications of these (e.g., neo-natal herpes).

To establish a more accurate estimate of the actual magnitude of the problems of sexually transmitted diseases in Canada, the Committee recommends that a national program be undertaken to define and validate diagnostic criteria for all sexually transmitted infections, to document their prevalence, particularly among young persons, and to assess which of this group are serious in their implications and therefore should be reported. Once this list is established, the Provincial Colleges of Physicians and Surgeons and their equivalents in each province and professional medical associations should be enlisted to support compliance in reporting of the selected listed conditions.

As a result of the potential long-term complications or disabilities associated with sexually transmitted diseases, it is imperative in the Committee's judgment that more comprehensive and detailed information be obtained with respect to: the knowledge by children and youths about the signs of sexually transmitted diseases; the number of children and youths who report that they have contracted these infections, and the age and sex of their partners; the steps taken to seek and obtain medical attention; and the identification of the long-term harms resulting from these diseases. The information obtained should constitute the basis of a national program of public education and health promotion.

Recommendation 15

The Committee recommends that section 253 of the *Criminal Code* be repealed.

Recommendation 16

The Committee recommends, in connection with the repeal of section 253 of the *Criminal Code*, that the Office of the Commissioner, in conjunction with the Department of Justice and the Department of National Health and Welfare in consultation with the provinces and non-governmental agencies appoint an expert interdisciplinary advisory committee having assigned responsibilities:

1. **To conduct comprehensive research at a national level to document the known prevalence of sexually transmitted diseases contracted by children and youths and to assess the health risks involved.**

2. **To develop ways of collecting information in a standard fashion across jurisdictions with regard to the occurrence of sexually transmitted disease, for children and youths under the age of 16 years.**

3. **To advise on the updating of the group of sexually transmitted disease protocols of standard and expected treatment practice, and separately advise on which of these diseases should be made reportable in relation to cases involving children and youths under the relevant provincial statutes and regulations, and in this regard, the full participation and co-operation of the Provincial Colleges of Physicians and Surgeons, and their equivalents, be sought to take an active role to encourage compliance in reporting.**

4. **To review the classification of sexually transmitted diseases and to make recommendations in relation to the modernization of the existing categories used in medical and hospital information systems across Canada.**

5. **To undertake a national survey of the experience and knowledge of children, youths and adults about sexually transmitted diseases and pregnancy, and to make recommendations with respect to the development of programs of public education and health promotion focussing upon the more effective provision of preventive and treatment services.**

Dangerous Offenders

Part XXI of the *Criminal Code* contains the statutory provisions authorizing the preventive detention, for an indeterminate period, of offenders, whose conduct meets the criteria specified in that part. Central to these provisions relating to dangerous offenders is: that these persons have been shown to have committed a 'serious personal injury offence'. Additional necessary grounds which, when established, permit a court to find the convicted persons to be dangerous offenders include conduct in any sexual matter by which they have shown a failure to control their sexual impulses and a likelihood of their causing injury, pain or other evil to other persons in the future.

The Committee obtained documentation from Correctional Service Canada for all persons in custody or under supervision who had been found to be dangerous and who had committed sexual offences against children and

youths. When this information was obtained, these 62 dangerous child sexual offenders constituted over half (54.4 per cent) of all offenders for Canada designated as being dangerous and three in four (73.8 per cent) of all dangerous sexual offenders.

When the circumstances of the sexual offences committed by dangerous child sexual offenders are compared to those committed by other convicted male child sexual offenders, it was found that the main dimensions of the conduct involved in the offences committed by both groups were remarkably similar. The two groups did not differ substantially with respect to the use of threats or physical force against victims. While there was a trend towards more serious acts having been perpetrated by dangerous child sexual offenders, these differences were relatively small. A sizeable proportion of convicted offenders who were not designated 'dangerous' had committed similar sexual acts against victims. While double the proportion of the victims of dangerous child sexual offenders had been physically injured compared to the victims of other convicted child sexual offenders, four in five victims in the former group were not reported to have been physically harmed. While one in five dangerous offenders had long criminal records, the rate of recidivism for four in five dangerous offenders was similar to the record of other convicted child sexual offenders having previous convictions.

In light of the findings of the National Corrections Survey, there can be no doubt that the application of the legal provisions pertaining to dangerous offenders, in instances where sexual offences against children and youths had been committed, is not made on a consistent and uniform basis. In 1969, the *Ouimet Report* documented that there was an uneven application of the then existing provisions. Despite amendments made to this legislation in recent years, the Committee's findings clearly show that sharp regional disparities still persist in this regard.

Many offenders convicted of having committed serious acts are not designated as 'dangerous' offenders; and of those so classified, many appear to have committed offences which are no graver than those perpetrated by other convicted child sexual offenders.

In the Committee's judgment, the options with respect to these provisions, which are now inequitably applied, are clear in relation to persons convicted of sexual offences against children and youths. Either the provisions should be amended, or new separate legislation should be introduced to provide added protection for children against sexual offences.

Recommendation 17

The Committee recommends that:

1. The provisions in Part XXI of the *Criminal Code* relating to dangerous offenders convicted of sexual offences against children and youths be amended to:

(i) specify the major sexual offences in the definition of "serious personal injury offence";

(ii) specify the conduct by which a sexual offender shows his disregard for others, and in particular, for children; and

(iii) indicate clearly that physical or mental harm is not a requirement in the case of child victims of sexual offences.

2. In keeping with the above amendments, which focus on specific conduct and offences, any mention of the prediction of future behaviour be deleted from dangerous offender legislation.

3. If the above amendments are not enacted, new legislation, separate from the dangerous offender provisions and meeting the proposed requirements, should be enacted to provide added protection for children against sexual offences.

Principles of Evidence

Evidence of Children

The Committee is strongly of the view that Canadian children cannot fully enjoy the protection the law seeks to afford them unless they are allowed to speak effectively on their own behalf at legal proceedings arising from allegations of sexual abuse. The Committee recommends that there be no special rules of testimonial competency with respect to children; a young person's testimony should be heard and weighed by the trier of fact in the same manner as the testimony of any other witness in the proceedings. Given the generally private nature of child sexual abuse, the overarching legal principle that all relevant evidence should be admissible in court takes on added significance.

The Committee draws support for its approach to children's testimony from the following grounds.

To make a child's testimonial competency contingent upon or influenced by the child's age fails to take into account the cognitive and developmental differences among children of the same age and, in the Committee's view, is wrong in principle.

The legal tests for the reception of children's evidence either upon oath (sworn) or not upon oath (unsworn) have become very close together in practice, notwithstanding that the corroboration requirements are completely different depending on whether the child gives sworn or unsworn evidence. The Committee considers that the subtle practical distinction between these two tests is too tenuous a basis upon which to attach a legal distinction.

The Committee's research findings indicate that the conventional assumptions about the veracity and powers of recall and articulation of young children are largely unfounded and, in any event, vary significantly among different children, as they do among adults.

Permitting the trier of fact to determine the weight that should be accorded a child's testimony and generally to assess the child's credibility, without "qualifying" the child witness beforehand, is by no means unprecedented in common law jurisdictions.

The approach to children's evidence advocated by the Committee finds additional support in the *Evidence Code* proposed by the *Law Reform Commission of Canada*.

Recommendation 18

The Committee recommends that the *Canada Evidence Act*, the *Young Offenders Act* and each provincial and territorial evidence act be amended to provide that:

1. **Every child is competent to testify in court and the child's evidence is admissible. The cogency of the child's testimony would be a matter of weight to be determined by the trier of fact, not a matter of admissibility.**

2. **A child who does not have the verbal capacity to reply to simply framed questions could be precluded from testifying.**

3. **The court shall instruct the trier of fact on the need for caution in any case in which it considers that an instruction is necessary.**

In the Committee's view, these reforms would help to ensure that Canadian children receive the full benefit of the protection the law seeks to afford them.

Corroboration

The Committee considers that the current state of the law with respect to the corroboration of an "unsworn" child witness's testimony is unacceptable. This conclusion is based on the following reasons.

The legal tests for the reception of children's evidence either sworn or unsworn have come very close together in practice, notwithstanding that the corroboration requirements are completely different depending on whether the child gives sworn or unsworn evidence. The Committee considers this an arbitrary distinction.

With respect to the unsworn evidence of a child, the wording of section 586 of the *Criminal Code* is different from the wording of section 16(2) of the *Canada Evidence Act* and section 61(2) of the *Young Offenders Act*, in the absence of any indication whether the corroboration required by these provisions differs depending on the legal context in which the issue of corroboration arises. Section 61(2) of the *Young Offenders Act* is similar to section 16(2) of the *Canada Evidence Act*.

The Committee's research findings indicate that the assumptions on which the special requirement of corroboration for young children's evidence are based, are largely unfounded.

Recommendation 19

The Committee recommends:

1. **That there be no statutory requirement for the corroboration of an "unsworn" child's evidence. The implementation of this recommendation would involve the repeal of section 586 of the *Criminal Code*, section 16(2) of the *Canada Evidence Act*, and section 61(2) of the *Young Offenders Act*, and corresponding sections of provincial evidence acts.**

2. **That the statutory corroboration requirements in sections 195(3) [procuring] and 253(3) [communicating a venereal disease] of the *Criminal Code* be repealed.**

3. **For greater certainty, that the *Criminal Code* be amended to provide that the "corroboration not required" provision in section 246.4 of the *Criminal Code* applies to *all* sexual offences, and not only to those offences currently listed in section 246.4.**

These reforms would place the testimony of a child in no better or worse position than that of an adult, which the Committee believes is the correct legal approach in principle. The cogency of a given child's testimony would be a matter of weight to be determined by the trier of fact, not a matter of admissibility or presumed unreliability, as is currently the case. The reforms recommended by the Committee would be consistent with the accused's right to make a full answer and defence to the charges against him or her. The accused retains his or her traditional rights of cross-examination and of address to the jury. Further, the Crown bears the strict onus of proving its case beyond a reasonable doubt.

Complaints by Victims

Although the Committee agrees with the abrogation of the "recent complaint" doctrine effected in 1983, it should be noted that section 246.5 of the *Criminal Code* states only that the "rules relating to evidence of recent complaint in sexual assault cases are hereby abrogated". On its face, the section would appear to abrogate the recent complaint doctrine only with respect to the "sexual assault" offences in sections 246.1, 246.2 and 246.3 of the *Criminal Code*. At common law, however, the doctrine of recent complaint applied to all sexual offences, whether or not the complainant's consent was in issue. Further, a number of sexual offences against young persons do not require that the child be "assaulted" in the legal sense, for example, incest, gross indecency, and the unlawful sexual intercourse offences. The credibility of a child victim of one of these offences may, accordingly, still be impugned under the recent complaint doctrine if the child does not complain of the incident at what the

court considers to be the first reasonable opportunity. The Committee considers this to be wholly unsatisfactory.

The Committee considers that the remarks the child or young person makes on reporting the incident often constitute the most cogent possible evidence and should not be excluded from the trier of fact's consideration. In the Committee's judgment, this form of evidence should be admissible on the basis of a statutory exception to the hearsay rule.

Recommendation 20

The Committee recommends that section 246.5 of the *Criminal Code* be amended to provide that:

The rules relating to evidence of recent complaint are abrogated with respect to *all* sexual offences.

Hearsay

Hearsay evidence is dealt with extensively in Bill S-33 and, in general, the Committee considers that the treatment of hearsay evidence in this proposed legislation is adequate. However, there is one form of crucially relevant evidence in the context of child sexual abuse for which these proposals do not explicitly provide. An out-of-court statement made by a young child which indicates that the child may have been sexually abused is inadmissible hearsay unless the circumstances of the statement fall within one of the established exceptions to the hearsay rule. Given the nature of sexual abuse of young children, however, such statements typically will not fall within any of the established or proposed hearsay exceptions. In the Committee's view, neither the exceptions to the hearsay rule at common law, nor the statutory proposals of Bill S-33, offer sufficient opportunities for the out-of-court statements of young children to be admitted in evidence for the purpose of proving that the matters asserted in those statements are true.

The exceptions to the hearsay rule at common law have traditionally been justified on the dual bases of necessity and presumed trustworthiness. That the admission into evidence of a young child's express or implied allegation of sexual abuse is necessary in order to reach a proper and just legal determination can scarcely be doubted. Where the child has made such a statement but is deemed legally incompetent to testify in court, the trier of fact will often be precluded from hearing potentially the most relevant evidence in the case, namely, the content of the child's statement. Alternatively, where the child is competent to testify, several considerations combine to justify, in appropriate cases, the narration of the child's statement by the person who received it. Further, where the child does testify in court, his or her perceived credibility as a witness will be a critical factor in the outcome. Allowing the recipient of the child's statement to testify concerning its content would enable the trier of fact to assess the child's credibility on a more realistic basis.

In the Committee's view, whether a child's previous statements relating to his or her sexual abuse should be admitted in evidence as an exception to the hearsay rule is best approached on a case-by-case basis. An inflexible rule, whether inclusionary or exclusionary, would fail to take into account the wide variability of circumstances from one case to the next and would be wrong in principle.

Recommendation 21

The Committee recommends that the *Canada Evidence Act*, each provincial and territorial evidence act, and the Quebec *Code of Civil Procedure* be amended in order to provide that:

1. **A previous statement made by a child when under the age of 14 which describes or refers to any sexual act performed with, on, or in the presence of the child by another person.**
2. **Is admissible to prove the truth of the matters asserted in the statement.**
3. **Whether or not the child testifies at the proceedings.**
4. **Provided that the court considers, after a hearing conducted in the absence of the jury, that the time, content and circumstances of the statement afford sufficient indicia of reliability.**
5. **"Statement" means an oral or a recorded assertion and includes conduct that could reasonably be taken to be intended as an assertion.**

The Committee considers that such a provision would strike an appropriate balance between the dictates of necessity and testimonial trustworthiness.

Sexual Conduct of the Complainant with Persons Other Than the Accused

The Committee considers that the amendments introduced in 1983 provide sufficient safeguards against unjustified inquiries into the complainant's past sexual conduct or sexual reputation, where the accused is charged with a form of "sexual assault". These amendments take into account the need to protect the complainant and preserve the accused's fundamental right of making a full answer and defence to the sexual assault charge against him or her.

These reforms, however, fail to provide any additional protection at all to young persons who are victims of a sexual offence other than a form of sexual assault, for example, incest, gross indecency and sexual intercourse with a female under age 14. In trials concerning the latter offences, the common law assumption that an unchaste young person is more likely to be untruthful will continue to operate. Consequently, insinuations concerning a young complainant's sexual history may still be admissible simply to impeach his or her credibility as a witness. In the Committee's view, this state of affairs is unacceptable.

Recommendation 22

The Committee recommends that the *Criminal Code* be amended to provide that:

1. **Sections 246.6 (1)(a) and 246.6 (1)(b), and the corollary provisions in sections 246.6 (3) through 246.6 (6), apply to *all* sexual offences.**

2. **Section 246.7 applies to *all* sexual offences.**

These amendments would ensure that the complainant's past sexual conduct would be inadmissible merely to impeach his or her credibility as a witness, and would finally extinguish the dubious common law assumption that there is a direct correspondence between chastity and veracity. Since the Committee also recommends that the concepts of "previously chaste character" and "more to blame" be extinguished from Canadian criminal law, there would be no inconsistency between these recommendations and the Committee's recommendations concerning amendments to the substantive criminal law of sexual offences.

Evidence of an Accused's Spouse

Recent years have witnessed an expansion of the kinds of offences for which the victim spouse will be considered competent to testify against the offending spouse. This development has been broadened to include offences directed, not only against the spouse of the offender, but also against a child of the family. As a consequence of the amendments to section 4 of the *Canada Evidence Act* introduced in 1983, the wife or husband of a person charged with virtually any sexual offence against a young person is a competent and compellable witness for the Crown, and this applies also to other assaultive offences where the offending spouse's victim is under the age of 14.

The rules of evidence relating to spouses in child welfare proceedings are governed by provisions of the various provincial "child welfare" laws, or by provincial evidence acts, or by both. There is uncertainty in a number of jurisdictions about whether a spouse who is compellable at a child welfare proceeding may also be compelled to disclose relevant communications made to him or her by the other spouse during their marriage.

The Committee considers that, in cases of alleged sexual or physical abuse of a young person, the social importance of making available to the court all probative evidence far exceeds that of ostensibly protecting a marital relationship. That the sexual abuse of young persons, by its very nature, is difficult to prove makes it even more crucial that all potentially relevant testimony, whether elicited from the offender's spouse or from an other party, should be accessible to the judicial process. Public policy and children's safety alike require that probative evidence should not be withheld.

Recommendation 23

The Committee recommends that:

1. **The *Canada Evidence Act* be amended to provide explicitly that, where a spouse is competent and compellable pursuant either to section 4(2) or 4(3.1) of that Act, the privilege of non-disclosure contained in section 4(3) may *not* be claimed by that spouse.**

2. **Each provincial and territorial evidence act, and the *Quebec Code of Civil Procedure*, be amended to provide explicitly that, where a spouse is otherwise competent and compellable at a child welfare proceeding, such spouse may not claim any privilege of non-disclosure relating to inter-spousal communications.**

Similar Acts

The doctrine of similar fact evidence tends to afford protection for sexually abused young persons. It allows the previous sexual behaviour of the accused with the same child or with others to be used to show that the accused may be guilty of the sexual offence charged, while safeguarding the accused against far-fetched inculpatory inferences based on his or her prior behaviour.

In light of the these considerations, the Committee recommends that this evidentiary doctrine be retained. Further, the Committee considers that the "similar acts" exception to the character evidence rule should not be codified, and in this respect, agrees with the *Federal/Provincial Task Force on Uniform Rules of Evidence* and with the legislative proposals of Bill S-33.

Evidence of past incidents of child abuse by parents (evidence of "past parenting") has an important role to play in child welfare proceedings, in determining whether a child is in need of protection from a particular person or persons and, if so, the most appropriate legal disposition vis-a-vis the child. The Committee considers that the court should have before it all relevant evidence in making these determinations.

Recommendation 24

With respect to provincial child welfare legislation, the Committee recommends that a provision similar to section 28(4) of the Ontario *Child Welfare Act* be enacted in each province and territory. Section 28(4) of that Act provides:

> **Notwithstanding any privilege or protection afforded under the *Evidence Act*, before making a decision that has the effect of placing a child in or returning a child to the care or custody of any person other than a society, the court may consider the past conduct of that person towards any child who is or has at any time been in the person's care, and any statement or report**

whether oral or written, including any transcript, exhibit or finding in a prior proceeding whether civil or criminal that the court considers relevant to such consideration and upon such proof as the court may require, is admissible in evidence.

Public Access to Hearings

The Committee acknowledges the vital importance of keeping criminal trials open to public scrutiny. In the Committee's view, the limited exceptions to this principle sanctioned by section 442(1) of the *Criminal Code* and by section 39 of the *Young Offenders Act* are both appropriate on policy grounds and sufficiently narrow to be defensible on constitutional grounds. However, the Committee concludes that, for the sake of greater clarity, these provisions should be amended in order to facilitate obtaining the full and spontaneous account of the child's evidence.

Where, for example, the presence of a public "gallery" in the courtroom would prevent a child or other young witness from giving as clear, full and spontaneous an account of his or her evidence as would be possible if his or her evidence was heard *in camera*, there should be express statutory authority for excluding the public.

The question of public access to child welfare proceedings is grounded in somewhat different considerations. Canadian provinces and territories have taken widely varying positions on this question, in accordance with their differing views about the most workable model for resolving child welfare controversies and the most appropriate set-off between public scrutiny and institutional effectiveness. In light of the Committee's research findings that most children are not considered to be harmed by participating in criminal or child welfare proceedings, whether open or closed, the Committee considers it inadvisable to recommend a single, uniform approach to this issue in the context of child welfare proceedings.

Recommendation 25

The Committee recommends that the *Criminal Code*, the *Young Offenders Act* and each child welfare act or equivalent contain a provision authorizing a judge to proceed *in camera* where such a course is required in order to obtain a full and candid presentation of a child's testimony. The proper administration of justice requires that the "best evidence" of all parties be accessible to the judicial process.

In the Committee's view, an emphatic change of attitude towards young sexual victims and young witnesses generally would do much to reduce the anxiety of the courtroom experience for children, for example:

1. The inculcation of a strong presumption on the part of parents, teachers, doctors, police officers, social workers, Crown attorneys and others that a

child's allegation of sexual abuse is true, and that it warrants immediate investigation and follow-up.

2. The employment of police officers and social workers specially trained in the management of cases of child sexual abuse and in child interviewing techniques, and the continued support from such persons throughout the investigative and judicial stages.

3. The training of Crown attorneys in the special social and legal issues of child sexual abuse, and the use of such attorneys in all contemplated child sexual abuse prosecutions.

4. The thorough preparation of child witnesses for the courtroom experience, in a manner appropriate to the child's intellectual and emotional development.

5. Where possible, and consistent with the accused's procedural and constitutional rights, the provision of special court facilities enabling a young child's testimony to be elicited in a more informal legal atmosphere.

These steps, as well as others advocated by the Committee, would materially improve the opportunities for children to speak effectively in their own behalf.

Publication of Victims' Names

In its review of the policies and practices concerning the publication of the names of children and youths who were victims of sexual offences, the Committee: monitored news articles concerning sexual offences published for a year in 34 newspapers across Canada; undertook a review of legal judgments reported by major legal reporting services; and requested the editor of each of these reporting services, and the Chief Justice or Chief Judge of every Canadian court having criminal jurisdiction to provide information concerning its policy in this regard.

Of the 2806 news articles reviewed in 34 newspapers, information was given in 11 reports (0.4 per cent) that tended to identify complainants who were children or youths. The Committee found that the practice of Canadian newspapers with respect to restricting the publication of information which might serve to identify young victims of sexual offences was one of commendable restraint. With few exceptions, the identities of young victims were not reported.

In its review of cases published by legal reporting services and the transcripts of court decisions, the Committee found 189 instances in which the identities of children and youths who had been victims of sexual offences had been disclosed. This number is a conservative estimate. Between 1970 and 1982, there were 111 cases in which young complainants were named, over two-thirds of which involved decisions by provincial Courts of Appeal. With

respect to the likelihood of being named, the young complainants of sexual offences are at greater risk of being identified in published accounts of legal reporting services and the transcripts of court decisions than they are of such disclosures being made in the nation's newspapers.

In the Committee's judgment, this practice which may be harmful to children is an unacceptable invasion of their privacy. It should cease.

Although the commercial reporting of legal decisions involves both the courts and the legal reporting services, the responsibility for ensuring that the identities of victims of sexual offences are not disclosed lies, in the Committee's opinion, primarily with the courts and with their administrative personnel. If appropriate deletions are made "at the source", there is no possibility that sexual victims will subsequently be identified in commercially published legal reports, which are dependent on this source. In the Committee's view, this responsibility of the courts should be given express statutory force by way of immediate amendments to the *Criminal Code*.

The Committee's research findings indicate that the record of provincial family courts, acting under express statutory guidelines in provincial enactments, is exemplary in this regard; it is not unreasonable to assume that Canadian courts of criminal jurisdiction would be equally attentive in the face of a clear directive from Parliament.

Recommendation 26

The Committee recommends that the *Criminal Code* be amended to provide that:

1. **In relation to any sexual offence contained in Part IV, Part V, or Part VI of the *Criminal Code*, no one shall publish any report in which the Christian name or surname of the child, or in which any information serving to identify the child, is disclosed.**

2. **"Information serving to identify the child" includes, but is not restricted to:**

   (i) **the name of the offender, where the offender is biologically or legally related to the child, or has the same name as the child;**

   (ii) **the address of the accused or the child;**

   (iii) **the school that the child attends, or the child's place of employment;**

   (iv) **the address or location where the offence is alleged to have been committed; and**

   (v) **the names of any witnesses whose relationship to the child or to the accused might give an indication of the child's identity.**

3. **The prohibition referred to in point (1) above is automatic, and does *not* require an application by the complainant, the Crown or the accused.**

4. **The prohibition attaches immediately upon either the laying of an information against the accused, the preferring of an indictment against the accused, or the arrest of the accused, whichever occurs first.**

5. **The prohibition is of indefinite duration, and attaches to all stages of the proceedings.**

6. **The prohibition extends to the print media, the electronic media, published court transcripts and the legal reporting services.**

7. **Any one who fails to comply with this provision is guilty of an offence punishable on summary conviction.**

(Implementation of these recommendations will require consequential amendments to sections 246.6, 261, 442, 457.2, and 467 of the *Criminal Code*, and to sections 38 and 16 of the *Young Offenders Act*).

Recommendation 27

The Committee further recommends that each court having criminal jurisdiction in Canada designate an officer whose responsibility it is to ensure that these provisions are complied with, and that each legal reporting service in Canada do likewise.

In the judgment of the Committee, prompt implementation of these recommendations will help to ensure that children and youths who have been victims of sexual offences are treated by the legal system with the respect and consideration that is due to them.

Strengthening the Provision of Services

The problems and harms experienced by sexually abused children and youths require sensitive and caring attention given by as few persons as possible whose efforts are strongly complemented by other services to ensure that their needs are provided for and that their protection is assured. In relation to providing assistance for these children, the Committee found that there was a broad spectrum with respect to the range, comprehensiveness and quality of the services provided. In each of the main services — police, hospitals and child protection agencies — a number of special programs have been developed which seek to provide a full range of services to meet the needs of young victims. These special programs, however, are the exception. The deficiencies documented in the Committee's research frequently included: inadequate assessment and investigation; omission of referrals that were warranted; and insufficient follow-up in order to assure the long-term safety and well-being of the child.

To redress these deficiencies, the Committee believes that a combination of measures is required, including: publicizing widely the work of special programs; adoption of common minimum standards between services for the assessment, investigation and treatment of sexually abused children; significant changes in provincial child welfare legislation and the current operation of the child abuse registers; development of medical examination protocols; and realignment of medical payment schedules in accordance with the responsibilities involved.

Special Programs

Special programs for child sexual abuse which provide for comprehensive assessment, investigation and treatment have been developed by a number of police forces, hospitals and child protection services across Canada. However, because most of these programs have been developed in recent years, the Committee found that there was virtually no published documentation for Canada in relation to any of the main services providing care for sexually abused children.

As a means of better informing the public and other professional workers about these special programs, the Committee believes that national conferences should be held at which the experience of the major services would be presented and with the reports being published and widely disseminated.

Recommendation 28

The Committee recommends that the Office of the Commissioner in conjunction with the Department of Justice, the Department of National Health and Welfare, the provinces and non-governmental agencies convene national conferences pertaining to child sexual abuse with the reports being published and widely disseminated, including:

1. **Special Youth Programs of Police Forces.**
2. **Special Medical and Hospital Programs.**
3. **Special Child Protection Programs.**
4. **Special Community and Voluntary Association Programs.**

Uniform Minimum Procedures for Services Provided

A major deficiency in the provision of services for sexually abused children is the absence of any consistent practice in how services are provided by the public agencies. While regional variation and flexibility may be hallmarks in the provision of social, medical and police services across Canada, their consequences for sexually abused children mean that a child in one province receives very different services and protection than a child in another province. The provision of these services is unco-ordinated; it lacks reasonable uniformity. These children must be better protected and more equitably served.

At a time when resources for all types of public services are limited and becoming scarcer in relation to meeting potentially infinite service needs, no single group can reasonably expect that it will be assigned its full requested quota of funding and personnel. There is a more important issue, namely, that involving the need for more effective co-ordination of efforts between public agencies providing complementary services to sexually abused children. There can be no doubt in relation to these issues — more complete assessments, more complete investigations and more effective continuing follow-up of cases —

that the protection afforded these children must be strengthened and that this must be done promptly by each level of government. There is no agreement and few statements concerning what constitutes the minimum necessary level of assessment and care of sexually abused children.

Recommendation 29

The Committee recommends that the Office of the Commissioner in conjunction with the Department of Justice, the Department of National Health and Welfare, Provincial Attorneys-General, Departments of Health and Child Protection Services and non-governmental agencies:

1. **Develop minimum standards of services to be provided by each of the main public services (police, medical and child protection services) in relation to the investigation, assessment and care of sexually abused children. These standards, pertaining to each service, should specify, among other considerations, that:**

   (i) **every one must report cases of child sexual abuse to the police and/or to child protection services;**

   (ii) **it be mandatory that all cases of child sexual abuse that constitute sexual offences under the *Criminal Code* be reported to the police;**

   (iii) **an initial assessment is to be made promptly and no later than 24 hours following notification;**

   (iv) **a medical assessment be made of the physical and mental state of all cases of child sexual abuse;**

   (v) **there be clear documentation of services provided and that long-term monitoring be undertaken to assure that the child is at no further risk of being harmed; and**

   (vi) **a procedure be established to review reports of child sexual abuse and ensure that the needs of the children are being adequately met.**

2. **That legislation be enacted to specify these standards and to assure that they are being met in the assessment and care of these children.**

Medical and Hospital Services

While the Committee recognizes that matters relating to the provision of health care fall largely under the jurisdiction of the provinces, it believes that a national initiative is required in order to develop procedures and guidelines for the clinical assessment and treatment of sexually abused children. The Committee is also cognizant of the fact that a number of other legislative and advisory bodies have made somewhat comparable recommendations. The recommendations that the Committee proposes are both feasible and warranted.

Recommendation 30

The Committee recommends that:

1. **The Office of the Commissioner, in conjunction with the Department of Justice, the Department of National Health and Welfare, and Provincial Departments of Health and Provincial Departments of the Attorneys-General, estnblish on a short term basis an interdisciplinary expert advisory committee to develop a standard protocol for the collection of information, examinations to be conducted, findings to be recorded and other necessary procedures.**

2. **This protocol be made widely available, particularly to those likely to have the first contacts, (such as paediatricians, family practitioners and the staff of emergency departments), that regular in-service instruction be provided in its appropriate use, and that a reimbursement item be developed to compensate for the time required for the completion of the protocol.**

The Committee believes that a national initiative along the lines recommended would be one means to strengthen the care and protection of sexually abused children by serving: to alert health professionals to the signs of these problems; to indicate the types of examinations and procedures it may be appropriate to consider and undertake for these children; to provide a basis for the clear specification of how these children may have been harmed and the follow-up required for their assessment and care by medical and social services; and to develop criteria that are both medically and legally specific in the collection and documentation of evidence.

Provincial Child Welfare Statutes

The Committee obtained extensive findings from its several national surveys in relation to referrals involving child sexual abuse to child protection services. On the basis of these findings, the Committee reaches the inescapable conclusion that the process of referral envisioned by provincial legislators and relied upon by child protection services is operating randomly and inefficiently. It is evident that child protection services are neither extensively turned to directly by sexually assaulted victims nor do they receive referrals on a sizeable proportion of cases known to the police, hospitals or voluntary community agencies and services.

The provincial statutes are of little value in terms of providing any real guidance or practical assistance to officials responsible for child care and protection, or in specifying clearly the basis upon which decisions are to be made whether incidents of child sexual abuse are to be dealt with under the terms of child protection legislation or under the sexual offences in the *Criminal Code*. On the basis of its findings, the Committee concluded that it is the organiza-

tion of child protection services, and not only the specific wording of any particular provincial statute, that affects the provision of assistance to sexually abused children. In this regard, sharply contrasting approaches have evolved in the administration and operation of different child protection services which have markedly different consequences in relation to affording assistance and protection for sexually abused children.

The Committee considered whether the statutory authority under which child protection services function should specify child physical and sexual abusive assessment responsibility in addition to the broad concepts of neglect and protection. As documented in the Report, there can be no doubt that more adequate assessment of cases of child sexual abuse is required.

Recommendation 31

The Committee recommends that Provincial Ministers responsible for Child Protection Services:

1. **Review provincial child welfare legislation to ensure the specification of assessment procedures to be undertaken on behalf of sexually abused children.**
2. **Introduce any appropriate amendments to this effect.**
3. **Develop a standard protocol for the collection of information, assessments to be conducted, findings to be recorded and other necessary procedures (e.g., reporting, referrals, etc.).**
4. **Make this protocol widely available, particularly to those likely to have first contacts with sexually abused children and that instruction be provided in its appropriate use.**

Child Abuse Registers

Registers, or analogous record-keeping systems, are authorized by the child welfare legislation of eight provinces. On the basis of its research findings concerning the use of child abuse registers, the Committee found that:

- A sizeable proportion of cases of child sexual abuse known to the police, physicians and child protection workers was not reported to child abuse registers.
- Reports to registers had only been made in one in three cases of previous instances of child sexual abuse of cases currently open.
- Proportionately more minor than serious sexual offences were reported.
- Child protection workers had consulted registers in relation to only one in five cases which were open.
- Procedures relating to the exchange of information between provinces were inconsistent and lacked formal structure.
- Several provinces having registers had no formal procedures with respect to the periodic review of cases listed in the files of registers.

In the Committee's view, in relation to the reporting of child sexual abuse, provincial child abuse registers are clearly not being used to the extent or in the manner intended by legislators. The utility of their functions appears also to be severely limited as case catalogues, research aids, or assessment tools.

Recommendation 32

The Committee recommends with respect to the procedures and operation of child abuse registers concerning the notification of child sexual abuse in provinces where these reporting systems have been established that:

1. **The Annual Conference of Provincial Directors of Child Welfare review the operation of these registers.**
2. **In each province, the Department of the Attorney General and the Department responsible for Child Protection Services review the legal aspects of procedures concerning the entry of names, notification, expungement and exchange of information between provincial registers.**
3. **Provincial Child Abuse Registers be discontinued unless their use can be changed to provide an effective means of protection for sexually abused children and youths.**

The use of the registers is characterized by a selective reporting of cases, an infrequent consultation by workers and an absence of effective means of exchanging information between provinces. This system cannot be construed as one that is particularly helpful in affording protection to sexually abused children. What is required is a central source of pooled information for each province rather than the existing inefficient and inaccurate classification systems now in use which serve little useful purpose as means to protect sexually abused children.

In the Committee's judgment, the alternatives are clear: either the registers must become effective means of identifying child sexual abuse, or they must be scrapped in favour of more effective procedures to provide protection for these children. The current operation of the registers is both inefficient and ineffective and does little to assist and protect most children who are sexually abused.

Criminal Injuries Compensation Boards

In each province and territory (except Prince Edward Island), there is an administrative board whose function is to award compensation to innocent victims of violent crime. In recent years, about one in 22 of the compensation awards made by these boards has been to victims of sexual assaults. These payments are generally small and in some jurisdictions enduring emotional and psychological harms are considered non-compensable.

The Committee believes that the existence and purpose of criminal injuries compensation boards must become generally better known to Canadians

and, specifically in relation to child sexual abuse, that the main helping services must be better informed about the services offered by these boards as a means of providing assistance for young victims and their families.

The Committee's research has clearly documented that the principal risks to sexually abused and assaulted children are the emotional and psychological harms which may be sustained, in some instances, having serious long-term consequences for these young victims. In relation to the enabling legislation concerning criminal injuries compensation boards in each jurisdiction, we believe these provisions should be amended to provide explicitly that the pain and suffering experienced by victims of sexual abuse and assaults be recognized as a basis for awarding compensation and that the federal-provincial cost-sharing arrangements should also be amended with respect to providing funding for compensation of victims of sexual offences in the *Criminal Code*.

Recommendation 33

In co-operation with the Department of Justice, the Department of National Health and Welfare and Provincial and Territorial Governments, the Committee recommends that the Office of the Commissioner:

1. **In conjunction with Recommendation 2 relating to the undertaking of a national program of public education and health promotion, launch a vigorous campaign to inform citizens of the existence and purpose of Criminal Injuries Compensation Boards. This campaign should involve both the communications media and the police, hospitals, child welfare agencies, and other helping services.**

2. **Review the funding of criminal injuries compensation programs and, where appropriate, recommend that the federal and provincial levels of support be increased in order to provide a more appropriate level of compensation for victims of sexual offences.**

Recommendation 34

In relation to the enabling provincial legislation for criminal injuries compensation boards in each jurisdiction, the Committee recommends that this legislation be amended to provide explicitly for compensation for physical and emotional pain and suffering to the victim, in order to ensure a more appropriate level of compensation for victims of sexual offences.

Information Systems

Much of the information reviewed by the Committee is based on the experience of sexually abused children known to various public services. In each of these surveys, more detailed information was obtained than that made available in the published statistics of these services. An obstacle inherent in

determining the officially reported occurrence of child sexual abuse in Canada is the absence of sufficiently precise information and reliance upon non-uniform systems of classification. Given even the lowest estimates of the extent of child sexual abuse in Canada, the problem is a matter of grave public concern. Until more reliable and comprehensive information is available on a continuing basis, it will remain a matter of conjecture how many Canadian children who are sexually assaulted are known to and served by public agencies.

The Committee believes that at the level of what is now known about these offences, it is crucial to understand why sexually assaulted children do or do not seek help, the nature of the harms done and the scope and adequacy of the services provided for their care and protection. Without such basic information being available, the public effort is effectively blindfolded concerning the dimensions of these problems and concerning the steps that it may be feasible to take in order to prevent and limit the occurrence of these acts.

Official Crime Statistics

The *Uniform Crime Report Statistics* assembled by Statistics Canada from police forces across the country do not give information about the victims of crimes or their ages. The actual counting of criminal acts in these statistics varies for offences involving property and offences against the person; no specific sexual offences are listed with these crimes being grouped under a few broad categories. The omission of information about victims in these statistics precludes the specific identification of those sex offences that specify the elements of these offences in relation to the age, sex and relationships of blood, marriage and positions of authority or trust. Because these fundamental types of information are missing in official crime statistics, this source can only be used as a baseline for documenting broad trends. It cannot be used as a basis to review the operation of existing sexual offences in the *Criminal Code*, or as a means to assess the potential impact of new legislative amendments.

On the basis of the Committee's review, it appears that current practices followed by the *Homicide Statistics Program* in the classification of related incidents and the relationships between victims and suspects may substantially under-report sexual assault child homicides. There is insufficient specification defining precisely what related acts were committed, over what period of time, or by whom relative to persons whom children knew or who were responsible for them. No annually updated and centrally maintained source of information is available for Canada about whether the persons who committed sexually related child homicides were involved after their release in committing further sexual offences against children.

There is no uniform system of *Corrections Statistics* for Canada. Each jurisdiction (federal, provincial and territorial) maintains its own means of assembling and classifying information about victims and offenders. Several provinces do not have central computerized systems permitting an efficient updating of the information available. Except by means of a direct manual

search of the files of convicted offenders, there is no procedure available in Canada whereby an assessment can be made of: the number of convicted child sexual offenders; the sentences they received; their prior criminal records in relation to the ages and sexes of victims; and sexual recidivism against children.

The absence of fundamental information in the Homicide Statistics and Correctional Statistics Programs constitutes a glaring omission about issues that deeply concern Canadians. If such information were annually collected on a systematic basis, it would permit an evaluation of the effectiveness of different sentencing practices, the benefits that may be gained from the various types of treatment provided for prisoners, and the efficacy of the different types of prison settings (minimum to maximum security) in which prisoners are housed.

In its research, the Committee found that vital information about the victims of sexual offences and the offenders committing these crimes is available in the records upon which these statistics are based. However, the collection of this type of information is precluded by the statistical systems that are now in place. In the Committee's opinion, it is mandatory that existing official crime statistics systems be revised to provide basic information about the victims of sexual offences and offenders with the results being published annually.

Recommendation 35

The Committee recommends that the Office of the Commissioner in conjunction with federal and provincial departments (including the Department of Justice, Department of National Health and Welfare, Statistics Canada, Department of the Solicitor General, Correctional Service Canada and National Parole Board in co-operation with their provincial and territorial counterparts) and the Canadian Association of Chiefs of Police, establish an interagency body for the purpose of developing:

1. **Uniform System of Classification between existing systems of official crime statistics (Uniform Crime Report Statistics, Correctional Statistics, Homicide Statistics Program).**

2. **Standard Core of Information with respect to sexual offences which as a minimum includes: age and sex of the victims; type of association (as defined by the *Criminal Code*) between victim and offender; injuries sustained by the victim; sexual offences committed as specified by the *Criminal Code* and in relation to specific sexual acts involved; and, the age and sex of the offender and the offender's prior criminal record.**

3. **National Reporting System with respect to the Standard Core of Information with the results published annually.**

4. **Biennial Review, in order to update and revise the National Reporting System.**

Disease Classification System

Having a disease classification system that identifies with reasonable accuracy medically examined cases of suspected and/or confirmed sexual abuse is an essential component of the services required for the protection of victims of these offences. In the absence of such a system, it is not possible to determine the extent of these medically reported conditions and, of greater importance for the well-being of the child, to assess the physical injuries and emotional harms sustained and their long-term impact on the child's health.

The existing classification system for the identification of sexual behavioural and character disorders is inconsistent with respect to the inclusion of some categories, but the exclusion of other major types of sexual behaviour. In this regard, it is an anomaly that while certain types of sexual behaviour and disorders are identified, no specific reference is made to persons committing incest or sexual assaults. Most of the existing categories are loosely defined and do not permit a reasonably uniform and consistent identification of behaviours and disorders. In the Committee's view, most of these categories should be dropped and be replaced by a classification system which is inclusive with respect to the identification of the types of sexual acts for which persons may have a predisposition to commit and with respect to the acts committed. The main deficiency of the existing classification systems is that they do not permit the sufficient or complete identification of persons against whom sexual acts are committed and how they may be injured.

The Committee recognizes that a review of the *International Classification of Diseases* (Ninth Revision) is being undertaken by the World Health Organization. This review is scheduled to be completed before the end of the 1980s. The Committee believes that the Government of Canada should not postpone consideration of the classification scheme until the international review has been completed. There is no assurance that the international review will address the concerns identified by the Committee.

Recommendation 36

The Committee recommends that the Office of the Commissioner in consultation with the provinces, the Department of Justice, the Department of National Health and Welfare and Statistics Canada, appoint an expert advisory committee comprised of experts in nosology, paediatrics and the law to:

1. **Review the codes of the *International Classification of Diseases* (Ninth Revision) in order to determine how these do or do not permit the identification of diagnoses relating to persons, both children and adults, who have been sexually abused.**

2. **Develop a revised classification with respect to the identification of physical injuries and emotional harms associated with sexual assault.**

3. **Enlarge this system with respect to the identification of the events or persons associated with these assaults (e.g., incest), in relation to:**

   (i) **the types of sexual acts committed;**

   (ii) **the circumstances or events under which the acts were committed;**

   (iii) **the type of association between the person committing the act and the patient; and**

   (iv) **review and make recommendations with respect to the identification of sexual abuse within the framework of medical services provided to: hospital outpatients; and patients examined and treated by physicians in private medical practice.**

Recommendation 37

On the basis of the review and recommendations provided by the expert advisory committee, the Committee recommends further that the Office of the Commissioner in co-operation with the Government of Canada should:

1. **Implement the recommended revisions with respect to the classification by Statistics Canada of hospital morbidity and death statistics.**

2. **Consult with the provinces to review means whereby the classification of medical services provided on an ambulatory basis can be revised to identify statistically persons who have been sexually assaulted and injured.**

3. **Make representation to the international nosological review committee of the World Health Organization with respect to effecting amendments along these lines to be contained in the Tenth Revision of the *International Classification of Diseases.***

Classification of Sexually Transmitted Diseases

The *International Classification of Diseases* (Ninth Revision) identifies diseases numerically and by title, and groups these diseases into a number of broad types of conditions. One of these categories, Infective and Parasitic Diseases, lists those conditions that are generally recognized as being communicable or transmissible, and within this category, the numerical identification is given for sexually transmitted diseases.

A number of different codes may be used with respect to the different manifestations of syphilis and gonorrhea. From a perspective of prevention, emphasis is warranted on those diseases which can be transmitted between persons. With respect to nongonococcal urethritis, cervicitis and vaginitis, it is now

more feasible than it was a few years ago to make more accurate diagnoses in terms of the agents involved. For certain conditions which are believed to be more prevalent now than in the past (e.g., herpes, chlamydia, vaginitis), a more complete and detailed listing is required for the specific identification of these conditions. In addition, consideration is warranted in relation to the development of a consolidated and distinctive classificatory grouping that brings together all types of sexually transmitted diseases.

The Committee's recommendations concerning the modernization of existing classification systems pertaining to sexually transmitted diseases are given in Recommendation 16.

Child Protection Services

In its review of the annual reports of provincial child protection services and in undertaking the collection of information in the National Child Protection Survey, the Committee found that the category 'child sexual abuse' was commonly used as an inclusive term which encompassed all forms of sexual offences committed against children and youths. This broad categorization is also used in provinces having central child abuse registers often without further specification in relation to the sexual acts committed.

As the Committee's findings indicate, the sexually abused children served by child protection workers range from those who have been victims of acts of exposure to those who have been raped. The existing classification systems preclude consideration of the gravity of the sexual acts committed, assessment of the harms sustained by victims of different sexual acts, or appraisal of which means of intervention may be more effective relative to the types of harms incurred.

The Committee believes that the more precise identification of the types of child sexual abuse known to child protection services would afford better protection for these children by means of more clearly specifying risks, indicating the scope of the assessments required, and providing a more effective basis upon which to determine the adoption of different intervention strategies.

Recommendation 38

The Committee recommends that the Office of the Commissioner in conjunction with the Department of National Health and Welfare, Department of Justice and provincial and territorial child protection services review the classification of sexual offences against children and youths used by child protection services with a view to establishing a common core of information concerning: the age and sex of the victim; the sexual acts committed; the injuries sustained by the vic-

tim; the association between victim and offender; the age and sex of the offender; and the disposition of the case, among others.

Research

In its review of available Canadian research pertaining to the issues established by its Terms of Reference, the Committee found that most Canadian studies on sexual offences represented the work of single disciplines. This separation has led to distinctive, fragmented and unrelated bodies of research for police work, community associations, child protection services, school programs, medical services, the field of corrections and social science surveys, among others. While such research purports to deal with sexual offences, it is seldom accurately informed about many of the main social, medical and legal issues, even as these pertain to the ages and sexes of victims, the sexual acts committed, the injuries sustained or the types of association between victims and offenders. The manner in which much of this research has been conducted typically does not consider the salient dimensions of the sexual acts committed and, with respect to the sexual offences in the *Criminal Code*, precludes the use of the findings obtained as a basis upon which evaluation is feasible in relation to the operation of these laws, the impact of legislative amendments or of the efficacy of different intervention strategies.

In regard to the need for comprehensive, fact-finding research concerning all aspects of sexual offences committed against young children, youths and adults, the Committee reiterates concerns that have been raised by several earlier federal inquiries. Such research is warranted and is feasible to undertake. In the Committee's judgment, the research that has been undertaken has failed to provide sufficient or adequate documentation with respect to the important issues identified by these earlier inquiries.

The Committee unequivocally adheres to the principle of the right of scholarly and professional researchers to undertake research independent of intrusion by the state and that they should be able to publish findings freely, except with respect to honouring ethical research standards. This principle is not at issue.

In recent years, the Government of Canada has supported research on sexual offences by means of: direct research grants; contracts; block funding of services; federally established advisory bodies; and studies undertaken directly by federal departments. In the Committee's judgment, while the studies conducted by means of public funding may have served other purposes, their results have usually failed to provide a sufficient foundation upon which either to base the reform of the law or to mount the restructuring of needed services. In addition, it is clearly evident that a sizeable body of this research has been funded without benefit of sufficient and independent interdisciplinary review. As a result, the quality of much of the research work completed is wholly inadequate.

Recommendation 39

With respect to strengthening the research dealing with sexual abuse and sexual offences against children and youths in the *Criminal Code*, the Committee recommends that:

1. **The Office of the Commissioner be assigned responsibility to assess and make recommendations concerning research dealing with sexual abuse.**

2. **The scope of the research to be reviewed by the Office of the Commissioner include all research funded by the Government of Canada by means of: grants; contract; block funding; federal advisory bodies; and federal departments.**

3. **The Treasury Board be instructed not to approve funding for research dealing with these issues unless the general designs of the studies have been reviewed by the Office of the Commissioner.**

The Committee has made no assessment of the funds assigned in recent years by the Government of Canada in support of research relating to offences in the *Criminal Code*. In light of the studies dealing solely with sexual offences, there is no doubt that this commitment has been substantial. With respect to research pertaining to the operation of the criminal law, the Committee believes that rigorous research review procedures should be adopted in relation to studies pertaining to sexual offences. The Committee believes further that this principle could be effectively applied in other areas of research involving the operation of the criminal law.

In undertaking its research on sexual offences against children and youths, the Committee identified a number of significant issues pertaining to the protection of the child or the management of offenders that warrant priority in the prospective funding of research studies. These issues include: injuries to sexually abused children; harms resulting from contracting sexually transmitted diseases; harms resulting from exposure to pornography; the widespread occurrence of acts of exposure; the treatment of convicted child sexual offenders; and the efficacy of sentence practices in relation to reducing sexual recidivism.The justification for further research in relation to each of these issues is specified in the Report.

Recommendation 40

The Committee recommends that the Office of the Commissioner in conjunction with the Department of Justice and the Department of National Health and Welfare fund, directly or by other means, national research studies focussing on:

1. **Injuries to Sexually Abused Children, focussing on: the efficiency of different clinical programs in providing protection and optimum management for these children; the nature of long-term harms sexually assaulted children experience; and how they can most effectively be prevented, anticipated, detected and treated. The Committee regards this as a pri-**

ority area for research funding. Investigation should be undertaken in conjunction with major hospitals across Canada specializing in providing treatment for sexually abused children.

2. **Sexually Transmitted Diseases Contracted by Children, focussing on: the types of diseases contracted by children and the long-term risks likely to be sustained. This research should be undertaken by the Laboratory Centre for Disease Control, Department of National Health and Welfare in conjunction with provincial sexually transmitted disease control programs.**

3. **Long-term Effects of Exposure to Children of Pornography, focussing on: the immediate and long-term effects of exposure to pornography, including associated sexual assaults, particularly where it does and where it does not have subsequent negative effects and the factors that distinguish these situations.**

4. **Acts of Exposure, focussing on: acts of exposure which constitute the largest single category of sexual offences committed against children and youths. Research on these acts should be undertaken in co-operation with the Canadian Association of Chiefs of Police in which:**

   (i) **persons reported to have exposed themselves to children and youths would be identified;**

   (ii) **a monitoring of any subsequently reported offences would be established;**

   (iii) **an evaluation be undertaken of the outcomes and effectiveness of different management procedures and sentencing practices in relation to reducing recidivism; and**

   (iv) **the classification of these acts in Uniform Crime Report Statistics be revised in order to permit the accurate identification of these acts on an ongoing basis.**

5. **Treatment of Convicted Child Sexual Offenders, focussing on: the needs and treatment of convicted child sexual offenders. This study should include an assessment of the social, physical and mental health needs of these offenders and of all aspects of the treatment provided for them and the various outcomes. Research on a national basis should be undertaken by the Correctional Service Canada and provincial and territorial correctional services.**

6. **Recidivism of Convicted Child Sexual Offenders, focussing on: the long-term effects of different sentencing decisions and management practices. Research should be undertaken by the Department of Justice in conjunction with Correctional Service Canada and provincial and territorial correctional services.**

Juvenile Prostitution

The ingrained pattern of exploitation, disease and violence in the daily lives of juvenile prostitutes is unmistakable from the Committee's research findings. These youths are the cast-offs of Canadian society. Many are early

drop-outs from school and have run away from home at an early age. About two in five of these youths had previously been found delinquent before a juvenile court, and while few had been charged or convicted of soliciting, a substantial proportion had been charged with other offences.

The Committee's findings leave no doubt that for many of these youths, their work as prostitutes introduces them to a criminal way of life in which they become progressively more entangled. They also face considerable risks of contracting serious diseases, of being severely physically injured and of being harshly exploited by pimps.

While most of these youths have at one time been in contact with social services or enforcement agencies, except for seeking assistance such as medical care which they deem essential to continuing to their work as prostitutes, few seek out other helping services. The programs which might assist them are largely mistrusted, regarded as useless or are ignored.

While the Committee is under no illusion that merely amending the law is an adequate or realistic response to juvenile prostitution, it does consider that the law has an important role to play in deterring and punishing those who sexually exploit young persons in this manner and in proclaiming the patent unacceptability of "sex for pay" where young persons are concerned.

Education for Prevention

Education is potentially the most effective tool for stemming the spread of juvenile prostitution. The Committee's findings leave no doubt about the emotional and physical harms, the risks and the privations associated with street life. The findings constitute a clear warning to any youth who is considering either running away or turning to prostitution.

In its Second Recommendation, the Committee calls for a national program of public education and health promotion as an essential means of affording better protection for sexually abused children. We also believe that there is an urgent need for this national program to focus upon the risks — physical, health, emotional and social — involved for youths who become prostitutes. It is essential that both parents or guardians and youths be fully informed about the actual conditions and risks associated with the street life of young prostitutes.

Recommendation 41

In conjunction with the national program of public education and health promotion specified in Recommendation 2, the Committee further recommends that special educational programs be developed drawing upon the findings of this Report documenting the conditions and risks associated with juvenile prostitution, and that these special educational programs be made available to parent-teacher associations and to schools, and by means of educational television.

Social Service Initiatives

There is no doubt that new and innovative programs directed primarily at those youths who have not yet become fully involved in street life must be developed and that these services must be securely and adequately funded. There are programs which have been tried that can form the basis for the development of services focussing upon the special needs of children and of those youths who are still experimenting with street life and who may still be amenable to assistance of a rehabilitative nature.

It is clear that no attempt to rehabilitate young prostitutes is likely to succeed unless it focusses attention on the need of these youths to alter their attitudes toward themselves and their way of living. Especially tailored helping programs are required having services designed to enhance the self-esteem and self-confidence of young prostitutes by imparting to them job or trade-related skills as well as conventional "life skills". Such programs, if successful, would also make it more financially feasible for these youths to get off the street. Programs having these objectives are vital prerequisites for the kind of action that is required to assist juvenile prostitutes to start a new life, one in which they have a perception of themselves as persons capable of living and working in a manner that is personally fulfilling, socially accepted and free of unacceptable risks to their health and safety.

The Committee's findings indicate that existing social services are ineffective in reaching many of these youths or in affording them adequate protection and assistance. In this respect, there can be no doubt in the Committee's judgment that special programs must be initiated and sufficiently funded to meet their needs. Despite the difficulties involved, the Committee believes that government at all levels has the unmistakable obligation to take positive steps in order to accomplish these objectives.

Recommendation 42

The Committee recommends that Provincial Child Protection Services develop special programs geared to serve the needs of young prostitutes and to identify the early warning signs of troubled home conditions warranting the provision of special services.

Recommendation 43

The Committee recommends that the Office of the Commissioner in conjunction with other branches of the Government of Canada establish support for special multi-disciplinary demonstration programs (child protection, police, education, medical and youth job training services) for five years (renewable) designed to reach and serve the needs of these youths, focussing upon: affording immediate protection; counselling; and education and job training.

Strengthening Enforcement Services

In its meetings with senior police officers and on the basis of its research findings, the Committee learned of the difficulties entailed in laying charges against the customers of young prostitutes and the investigation and charging of pimps with whom these young prostitutes may associate. There is no doubt that existing legal provisions do not accord with the realities of juvenile prostitution and that the criminal law must be substantially amended to provide the nation's police forces with the necessary legal means to enable them to control and reduce the sexual exploitation of youths by means of prostitution.

In addition to amending the criminal law, a matter dealt with by the Committee's subsequent recommendations, it is evident that in light of their other enforcement responsibilities, most Canadian police forces have insufficient manpower to assign officers to the lengthy task of assembling the evidence requisite for the laying of charges against pimps. While such investigations are demonstrably feasible, each may entail several months of police investigation.

For these undertakings to be successful, it is essential to have police officers who are especially trained and experienced in regard to these investigations and who are given sufficient time to enable them to undertake adequately these assignments. In addition to the reform of the prostitution-related offences, the Committee believes that enforcement services must be considerably strengthened in order to permit them to succeed in laying charges against clients and pimps who exploit juvenile prostitutes.

Recommendation 44

The Committee recommends that the Office of the Commissioner in conjunction with the Department of Justice and the Department of the Solicitor General establish with the provinces a special federal-provincial cost-sharing program to provide specific support to municipalities enabling them to establish special police force units, having primary responsibilities for:

1. **Investigation and laying of charges against the clients of young prostitutes.**
2. **Investigation and charging of pimps working with young prostitutes.**

Soliciting for the Purpose of Prostitution

The amelioration of the tragic plight of juvenile prostitutes lies, in the Committee's opinion, chiefly in the implementation of social rather than legal initiatives. We believe that young prostitutes can be helped by more effective social intervention and by the development of programs aimed at reintegrating them into the mainstream of society. However, such social initiatives are most frequently rendered useless because they are not sought out by these youths and because viable means of intervention are currently lacking.

There are no effective means either in federal or provincial legislation of holding these children and youths. There are no effective means of bringing these children and youths into situations where they can receive guidance. There are no effective means of stopping the demonstrated harms that these children and youths are bringing upon themselves.

For these reasons, the Committee believes that the implementation of criminal sanctions against these children and youths must be made a legal possibility by creating an offence in order that social intervention can take place.

In reaching this conclusion, and reflecting divided opinions in the field, there was strong disagreement by some Members of the Committee that a criminal sanction against juvenile prostitutes was either desirable or likely to be effective, and indeed, a concern that such a prohibition would detract from the primary emphases upon prevention, early identification and early intervention.

In recognizing these important concerns, there is no desire on the part of the Committee to affix a criminal label to any juvenile prostitute. The Committee concluded, however, that in order to bring these children and youths into situations where they can receive guidance and assistance, it is first necessary to hold them and the only effective means of doing this is through the criminal process. Accordingly, the Committee reluctantly concludes that it is necessary to have a specific criminal sanction prohibiting children and youths engaging in prostitution. This sanction is a complementary prohibition to that recommended by the Committee against the customers of juvenile prostitutes. Together, these sanctions would constitute a clear legislative commitment that juvenile prostitution has no place in Canadian society.

Recommendation 45

The Committee recommends that the *Criminal Code* be amended to provide that:

1. **Every young person who offers, provides, attempts or agrees to offer or provide for money or other consideration to engage in a sexual act with another person is guilty of a summary conviction offence.**

2. **For the purpose of this section, "young person" means a person who is under 18 years of age.**

The findings from the National Juvenile Prostitution Survey indicate that the current offence of soliciting for the purpose of prostitution in section 195.1 of the *Criminal Code* is not effective either in deterring young prostitutes from working on the streets, or in deterring tricks from seeking out their services. Of the young prostitutes interviewed, only one in 10 had ever been convicted of this offence. The reason is clear: juvenile prostitutes do not find it necessary to be "pressing or persistent" in order to secure clients for their services. Most of

the prostitutes interviewed said that they would only take the risk of actively propositioning prospective clients when they had yet to attain their daily quota.

From the standpoint of criminal policy, the Committee's findings concerning the public nuisance aspect of prostitution (to which section 195.1 of the *Criminal Code* is primarily addressed) are particularly relevant. Slightly less than half of the young prostitutes interviewed stated that, at one time or another, they had approached and propositioned someone who was not seeking the services of a prostitute. Even more significant are the Committee's findings concerning the solicitation by tricks of women who were not prostitutes. Almost two-thirds of the juvenile prostitutes interviewed stated that they had witnessed such an occurrence. The reported reactions of the women thus importuned ranged from insult and disgust, shock and anxiety, to fear, anger and, in a few instances, minor acts of violence. Sometimes the tricks verbally abused these women, persisted in their solicitations, and followed and grabbed at them.

The Committee's findings indicate that the clients of prostitutes pose at least an equal if not a greater public nuisance than do the prostitutes themselves. While many tricks attempt to solicit the services of young prostitutes from within the confines of a motor vehicle, the law, as presently constituted, does not take this fact into account. In light of its research findings, the Committee endorses the legislative proposals of the *Criminal Law Reform Act*, 1984 (Bill C-19) which would make the "soliciting" offence in section 195.1 applicable to tricks as well as to prostitutes and would widen the definition of "public place" to include a motor vehicle located in or on a public place.

In the Committee's judgment, a separate criminal offence is needed to deter persons who seek out and use young prostitutes. As noted earlier, section 195.1 of the *Criminal Code* requires that an accused be "pressing or persistent" in his or her solicitations and that the solicitation occur in a "public place". While these requirements are relevant to the public nuisance aspect of prostitution, they are clearly irrelevant to society's more compelling interest in deterring and punishing the exploitation of young persons by way of prostitution. Furthermore, the substantial harms incurred by young persons who engage in prostitution are independent of whether a prospective customer actively solicits their services in a public or private place. The Committee does not consider that adults who exploit the sexual vulnerability of young persons should be considered any less culpable because they agree to pay for the sexual act with a young person than if they were to threaten or coerce sexually a child or youth without payment.

The tragic consequences of a life of prostitution for young persons are extensively documented in this Report. These serious harms justify the imposition of a criminal sanction against the customers of young prostitutes. Depending on the age of the young person and the nature of the sexual act engaged in, the customer of a young prostitute could also be charged with one of the sexual offences against children in the *Criminal Code*.

Recommendation 46

The Committee recommends that the *Criminal Code* be amended to provide for a separate offence in the following terms:

1. **Every one who offers, provides, attempts or agrees to offer or provide, money or other consideration to a young person for the purpose of engaging in a sexual act with, against, or upon such young person, is guilty of an indictable offence and is liable to imprisonment for two years.**

2. **For the purpose of this section, "young person" means a person who is under 18 years of age.**

3. **It is no defence to a charge under this section that the accused believed the person to be 18 years of age or older.**

Publicizing Clients' Names

In general, the law does not prohibit the public identification of persons convicted of crime, including those who are convicted of soliciting the services of young prostitutes. On the basis of its review of reports published for one year in 34 newspapers across Canada, the Committee found that in practice while the names of persons convicted of other crimes, such as robbery or theft, were given prominence in the media, this was seldom done in relation to persons convicted of soliciting prostitutes.

In addition to the imposition of criminal sanctions against customers of juvenile prostitutes, the Committee believes that social sanctions must be invoked as a powerful means of deterring persons who sexually exploit young persons by means of prostitution. The information given to the Committee by these youths leaves no doubt that most of their customers would not wish to have their identities known publicly as persons who had used the services of juvenile prostitutes. The prospect of public exposure and humiliation and the resultant loss of reputation, family, friends and even, in some instances, of business, would suffice in many instances to dissuade these persons from availing themselves of the sexual services of young prostitutes.

The Committee believes that the publishing of the names of persons convicted of soliciting young prostitutes would serve as a contributory deterrent to persons inclined to seek the sexual services of juvenile prostitutes.

Recommendation 47

The Committee recommends that the Office of the Commissioner in conjunction with the national and provincial associations for the public media mount a program of giving prominent publicity to the names of persons convicted of soliciting juvenile prostitutes who are under age 18.

Procuring and Living on the Avails of Prostitution

The role played by pimps in introducing and coercing young females into a life of prostitution, and of locking them into this life by way of drugs, violence, and threats of violence, is clearly documented in the Committee's research. In the Committee's opinion, the parasitic relationship between pimps and the young prostitutes in their employ is an intolerable form of child abuse. It warrants the application of effective legal sanctions against these exploiters of the young. The pimp cultivates and exploits the prostitute's vulnerabilities — her low self-esteem, her loneliness on the street, her need for love and protection. The oppressive social environment in which young prostitutes are compelled to work, and which the pimp actively engenders, robs these young persons of their human dignity and of opportunities for pursuing a more healthful and constructive way of life. In the Committee's view, the response of the criminal law to this egregious exploitation of the young must be certain and severe.

The Committee's research has unearthed a number of social facts about juvenile prostitution which can serve as a basis for strengthening the protection afforded to young persons by the offences of "procuring" and "living on the avails of prostitution" in section 195 of the *Criminal Code*. Although some of the procuring offences in section 195 apply only to the procuring of a person to have illicit sexual intercourse with another person, the Committee's research reveals that the act of sexual intercourse is only one of many sexual acts which young prostitutes are procured to perform. The Committee recommends that section 195 of the *Criminal Code* be amended accordingly.

Further, in light of the Committee's finding that some pimps have only one prostitute working for them (and, in many cases, living with them), the Committee recommends that the presumption in section 195(2) be widened to provide that evidence that a person lives with or is habitually in the company of a prostitute or prostitutes is, in the absence of evidence to the contrary, proof that the person lives on the avails of prostitution. These reforms would materially strengthen the impact of the *Criminal Code* in this context and would better correspond to the modern realities of juvenile prostitution in Canada.

In the Committee's judgment, the limitation period for prosecution in section 195(4) of the *Criminal Code*, and the corroboration requirement in section 195(3) relating to the offences of "procuring", are neither necessary nor appropriate in the modern context of juvenile prostitution. The Committee sees no reason for requiring a prosecution under section 195 to be commenced within one year after the time the offence is alleged to have been committed. Limitation periods for the prosecution of indictable offences are highly exceptional in Canadian criminal law: the importance of society's interest in deterring and punishing this blatant exploitation of young persons argues strongly against any procedural limitation of this kind. In reference to section 195(3), the Committee adheres to its general principle that the credibility of a young victim of sexual abuse should be a matter of weight to be decided by the trier of fact, not a matter of presumed unreliability.

With respect to the sentences that should be available against individuals who procure young persons to engage in sexual acts with another person, or who live on the avails of the prostitution of young persons, the Committee considers that deterrence and denunciation must be the paramount sentencing considerations. The cold-blooded nature of the pimp's conduct, and its often life-destroying implications for the young prostitutes who do his bidding, should entail a mandatory sentence of imprisonment. The Committee can conceive of no factors which could possibly mitigate the severity of this form of exploitation of the young.

The conduct of the pimp towards young prostitutes is premeditated, persistent and often brutal; the consequences of this relationship for young prostitutes are invariably oppressive and dehumanizing. Parliament has seen fit to prescribe severe sanctions against persons convicted of grave sexual offences. In the Committee's judgment, it can scarcely be argued that the procurers of young prostitutes pose any less of a threat to the well-being of Canadian society or that the importance of deterring and denouncing the sexual procurement of young persons is any less compelling. The Committee therefore recommends that a sentence of 14 years' imprisonment, with a minimum mandatory sentence of two years' imprisonment, be prescribed for persons convicted of procuring or of living on the avails of the prostitution of a person who is under 18 years of age.

Recommendation 48

The Committee recommends:

1. **That the phrase "illicit sexual intercourse" in section 195(1)(a), section 195(1)(b), and section 195(1)(i) of the *Criminal Code* be amended to read, "illicit sexual intercourse or any other sexual act".**

2. **That the phrase "habitually in the company of prostitutes" in section 195(2) of the *Criminal Code* be amended to read, "habitually in the company of a prostitute or prostitutes".**

3. **That section 195(3) of the *Criminal Code* be repealed.**

4. **That section 195(4) of the *Criminal Code* be repealed.**

5. **That section 195(1) of the *Criminal Code* be amended to provide for a sentence of 14 years' imprisonment, with a minimum mandatory sentence of two years' imprisonment, for an accused who is convicted of procuring or of living on the avails of the prostitution of a person who is under 18 years of age.**

Reform of the Law Relating to Child Pornography and Access by Children to Pornographic Materials

The Committee's Terms of Reference ask it to determine the incidence and prevalence of sexual exploitation of children by way of pornography and to examine the question of access by children to pornographic materials. As with

several other matters within the Committee's mandate, the legal regulation of these two areas has both federal and provincial aspects. The making, distribution, sale and importation of child pornography are matters which fall primarily within the legislative competence of Parliament. The question of access by children to pornographic materials is a matter which, to date, has been regulated through the operation of a small number of municipal by-laws authorized at the provincial level.

The federal *Criminal Code* does not contain a specific offence relating to making, distribution or sale of child pornography. This behaviour is, however, indirectly proscribed by the various sexual offences in the *Criminal Code* and by the *Criminal Code* provisions relating to obscene publications. The *Customs Tariff* prohibits the importation into Canada of books or visual representations of an "immoral or indecent" character and the *Customs Act* authorizes the seizure and forfeiture of any such materials that are unlawfully imported. These statutory powers are supplemented by provisions in the *Canada Post Corporation Act* pertaining to the use of the mails. In the area of electronic broadcasting, the Canadian Radio-television and Telecommunications Commission (C.R.T.C.) has been invested by Parliament with plenary regulatory authority over radio, television, cable television and pay television, and this includes the authority to establish limits on the kinds of sexually explicit representations that may legitimately be broadcast.

The provinces and territories have a complementary regulatory role in this context. The use of a child by his or her parent or guardian in the making of a pornographic depiction would almost certainly render the child "in need of protection" under the child welfare laws of each province and territory. With respect to the access by children and youths to pornographic materials, the provinces may regulate, by way of classification and other means, the public exhibition of films. A small number of municipalities have also enacted by-laws regulating the accessibility to children of pornographic materials in retail outlets, under provincial enabling legislation.

The Making, Distribution, Sale and Importation of Child Pornography

Child pornography is a direct and palpable product of child sexual abuse. It comes into existence, and can only come into existence, through the base and coldly premeditated exploitation of a young person's sexual vulnerability. The justification for stringent legal regulation of child pornography is the state's transcendant interest in protecting and fostering the well-being of its children and in punishing and deterring criminal conduct which is inimical to their well-being.

In the Committee's judgment, the need for explicit and severe legal sanctions against persons involved in the making, distribution, sale or importation of child pornography is compelling for several reasons.

First, child pornography is produced directly through the sexual abuse of young persons. It is a manifestation of that abuse which is sufficiently distinct and unacceptable to warrant separate treatment by the criminal law.

Second, child pornography constitutes a permanent record of a child's sexual exploitation and the harm and humiliation to the child are exacerbated by the circulation, distribution or sale of such materials.

Third, materials which depict children engaged in sexual conduct are often solicited by adults who use the materials to persuade other children to engage in similar conduct or who are themselves child molesters. The Committee's findings in this regard bear out this fact. In particular, these findings buttress the argument for enacting express legal sanctions against the importation and possession of child pornography.

Fourth, the distribution network for child pornography must be shut down if the production of such materials, which itself requires the sexual exploitation of children, is to be effectively controlled. Legal sanctions directed at each link of the chain of distribution would help to curtail conduct which compounds the original crime of making child pornography and which exacerbates the harm and humiliation experienced by the young participants.

Fifth, the importation, circulation, distribution or sale of child pornography provides economic and other motives for the continued production of such materials and, in effect, guarantees additional child sexual abuse to that end. In the Committee's judgment, the only effective way to curtail the production of child pornography, and to eradicate it from the Canadian market entirely, is to attach criminal consequences to the conduct of each participant in the process, from the importer or maker of child pornography to the ultimate consumer of child pornography, and to all intermediate parties who are culpable.

Sixth, the existing *Criminal Code* framework relating to obscene publications is inadequate to deal with the special circumstances attending the making and distribution of child pornography. The general definition of obscenity does not reflect the state's particular and more compelling interest in prosecuting and punishing those who promote the sexual abuse of children in this manner. The definition of "obscene publication" in section 159(8) of the *Criminal Code* pertains to the overall content of the publication, rather than to the circumstances of its production. *In reference to child pornography, it is the circumstances of its production, namely, the sexual exploitation of young persons, which is a fundamental basis for proscription.* The availability of child pornography also constitutes a message to the consumers of this matter that children are available for these purposes. Where a young person has been used in the making of pornographic visual material, it is of course irrelevant whether some view the material as having literary, artistic or aesthetic value. Plainly, the offences relating to obscene publications are based on different policy considerations than those which operate in the context of child pornography.

The Committee had no difficulty in agreeing that legal sanctions at each link from production through importation, distribution and sale were required to increase the protection to children exploited in the preparation and depictions of pornographic activities. There was sharp disagreement, however, over whether this should extend to simple possession of such material.

Those Members who favoured this, argued it was the logical extension of the chain of legal sanctions. Those Members who opposed it reflected a major concern about intrusion into the privacy of the home, regressive moves towards more control of personal choice and life-style and an extension of censorship principles. The Committee's review of these issues reflects the divided opinions held by various groups in Canadian society.

The Committee's recommendations concerning child pornography are restricted to *visual* pornographic depictions of persons under the age of 18. Pedophilic literature and visual pornographic depictions involving persons 18 or older would be subject to the general obscenity provisions in sections 159 and 160 of the *Criminal Code*. In the Committee's judgment, a special child pornography prohibition attacks, not the legitimate expression of ideas, but rather a form of criminal conduct that is clearly inimical to the well-being of young children and youths.

Recommendation 49

1. The Committee recommends that the *Criminal Code* be amended to include the following provisions:

(i) Every one who:

(a) uses, or who induces, incites, coerces, or agrees to use a person under 18 years of age to participate in any explicit sexual conduct for the purpose of producing, by any means, a visual representation of such conduct;

(b) participates in the production of a visual representation of a person under 18 years of age participating in explicit sexual conduct;

(c) makes, prints, reproduces, publishes, distributes, circulates, or has in his or her possession for the purposes of publication, distribution, or circulation a visual representation of a person under 18 years of age participating in explicit sexual conduct; or

(d) sells, offers to sell, receives for sale, advertises, exposes to public view, or has in his or her possession for the purpose of sale a visual representation of a person under 18 years of age participating in explicit sexual conduct,

is guilty of an indictable offence and is liable to imprisonment for 10 years.

(ii) Every one who knowingly, without lawful justification or excuse, has in his or her possession a visual representation of a person under 18

years of age participating in explicit sexual conduct, is guilty of an indictable offence punishable on summary conviction.

(iii) For the purpose of sections (i) and (ii) above,

(a) a person who at any material time appears to be under 18 years of age shall, in the absence of evidence to the contrary, be deemed to be under 18 years of age;

(b) "explicit sexual conduct" includes any conduct in which vaginal, oral or anal intercourse, bestiality, masturbation, sado-masochistic behaviour, lewd touching of the breasts or the genital parts of the body, or the lewd exhibition of the genitals occurs or is depicted;

(c) "visual representation" includes any representation that can be seen by any means, whether or not it involves the use of any special apparatus.

(iv) In any proceeding under this Part, where a court is satisfied that a matter or thing is a visual representation referred to in section (i) or (ii), the court shall order the matter or thing and any copies thereof to be forfeited to Her Majesty in right of the province in which the proceedings take place, for disposal as the Attorney General may direct.

2. **The Committee recommends that the relevant definitional, seizure and forfeiture provisions in the *Customs Tariff, Customs Act*, and *Canada Post Corporation Act* be amended to conform with the *Criminal Code* prohibitions against visual representations of explicit sexual conduct involving persons under 18 years of age.**

3. **The Committee recommends that the *Broadcasting Act*, and regulations made thereunder, be amended to conform with the *Criminal Code* prohibitions against visual representations of explicit sexual conduct involving persons under 18 years of age.**

4. **The Committee recommends that the provincial Departments of the Attorney General, in conjunction with the federal Department of Justice, develop criteria for film and video classification which conform with the *Criminal Code* prohibitions against visual representations of explicit sexual conduct involving persons under 18 years of age.**

Strengthening Federal Enforcement Services

In addition to amendments to the law, it is evident from the Committee's research that there is also a need to restructure and strengthen the capacity of federal enforcement services to detect and seize the child pornography that is brought illegally into Canada. A central computerized information system has

been established by Revenue Canada Customs and Excise Headquarters for the purpose of storing information on seizures of pornographic and obscene matter. The Committee found that information concerning only about two in five seizures made at customs' entry points had been reported to this central registry. In order to obtain information with respect to seizures that are not entered on the central registry, it would be necessary to undertake a direct manual search of the seized records retained at the Regional Offices of Revenue Canada.

Since the central computerized system does not provide documentation of all seizures, it fails to serve effectively as a means of identifying persons who may be habitual smugglers of child pornography. This failure is significant: the Committee's findings indicate that persons who sexually molest children are also likely to purchase and possess child pornography and to seek to involve children and youths in the making of visual representations of explicit sexual conduct.

Recommendation 50

The Committee recommends that, in conjunction with the Office of the Commissioner, the federal Department of Justice in consultation with Revenue Canada and the Department of the Solicitor General review the operation of the central registry of Customs seizures with a view to assuring its efficient operation as a means of identifying the importers of child pornography.

On the basis of information assembled by the Committee, it is evident that customer mailing lists of distributors of child pornography which are routinely seized by foreign enforcement agencies is an even more effective method of identifying persons who illegally import child pornography. Seized mailing lists instantly identify the persons whose use of the postal system may warrant official scrutiny.

The Committee recognizes that prudence and discretion must be exercised by law enforcement officers before they undertake to search a citizen's home or place of business. Legal safeguards have been enacted in federal statutes and in the *Canadian Charter of Rights and Freedoms* to prevent abuse of the authority of the police to conduct searches and seizures. In the Committee's judgment, however, an active search and seizure policy is warranted where it will serve to identify the consumers of illegally imported child pornography.

Where foreign police agencies provide the R.C.M.P. with subscriber mailing lists involving child pornography, the circumstances exist to justify thorough investigations, including searches and seizures. Were the R.C.M.P. to make it known publicly that it was actively seeking the co-operation of foreign enforcement agencies in obtaining mailing lists, and that it intended to conduct a rigorous investigation of any suspected case of unlawful postal importation of child pornography so discovered, it is likely that the prospect of being dis-

covered, of having one's residence searched and of facing prosecution and conviction would dissuade a significant number of persons from soliciting child pornography through the mail.

Recommendation 51

The Committee recommends that the federal Department of Justice in conjunction with the Department of the Solicitor General, Revenue Canada and the Office of the Commissioner:

1. **Announce publicly, including notices posted at entry points and a statement contained in Customs Declaration Forms, that the R.C.M.P. is actively seeking the co-operation of foreign enforcement agencies to obtain information concerning the producers and distributors of child pornography, and that the R.C.M.P. intends to conduct a rigorous investigation of any suspected case of unlawful importation of child pornography.**

2. **Instruct the R.C.M.P. to seek out, where possible, the mailing lists of all major commercial producers and distributors of child pornography, and to undertake thorough investigations on the basis of the information so provided.**

Access by Children to Pornographic Materials

The Committee's research indicates that the distribution and sale of pornography is a thriving and growing enterprise; moreover, it is an enterprise supported by large numbers of Canadians. Hundreds of thousands of Canadians have viewed or purchased pornographic materials. There is no evidence that this trend will abate. On the contrary, the Committee's research findings strongly suggest that the consumption and sale of these materials will increase in the future. But despite the widespread purchase of pornography, there is also an urgent public concern about the open display of these materials and about their ready accessibility to young persons. From its National Population Survey, the Committee found that there is considerable agreement in Canada that an age limit should be established in relation to the purchase of pornography and that pornographic materials should not be displayed in a manner which makes them accessible to children.

In reference to the operation of municipal by-laws designed to regulate the sale and accessibility of pornography to children, the Committee found that relatively few municipalities had enacted by-laws of this kind. Further, some of these by-laws have been held to be legally invalid due to their lack of specificity in identifying the kinds of pornography sought to be regulated.

In the Committee's judgment, effective regulation of the access by children to pornographic materials can be achieved only through legislation which is national in scope, enacted under Parliament's constitutional authority to enact laws in relation to criminal law,[35] and for the "peace, order, and good

government of Canada."[36] Federal statutes regulating the sale of tobacco products to minors[37] and the sale of products hazardous to children (for example, chemically-based products which may be used for "glue-sniffing")[38] have been upheld as valid exercises of the federal criminal law power, as have the provisions of the *Juvenile Delinquents Act*.[39]

In the Committee's judgment, the documented national dimensions of the problem of access by children to pornographic materials necessitate the enactment of a federal prohibition "to deal with a genuinely new problem which did not exist at the time of Confederation and clearly cannot be put in the [provincial legislative] class of 'Matters of a merely local or private nature'"[40]. In light of the strong concerns expressed by Canadians about the ready access by children to pornographic materials, the Committee considers that provisions should be enacted to prohibit the accessibility and sale of pornography to young persons.

Recommendation 52

The Committee recommends that the *Criminal Code* be amended to prohibit the accessibility and sale of visual pornographic materials to young persons under 16 years of age. The amendments should incorporate the following elements:

1. **A detailed specification of the range of visual pornographic materials sought to be prohibited, in terms both of content and visual medium. Magazines, video-cassettes and "sex aids" should be expressly included.**

2. **Visual pornographic materials which are offered for sale in commercial outlets must be covered and sealed.**

3. **No person shall knowingly sell, display or offer to sell such visual pornographic materials to anyone under 16 years of age.**

   For the purpose of sections (1), (2) and (3) above, "visual pornographic materials" includes any materials in which vaginal, oral or anal intercourse, bestiality, masturbation, sado-masochistic behaviour, lewd touching of the breasts or the genital parts of the body, or the lewd exhibition of the genitals is depicted.

4. **Every one who contravenes these provisions is guilty of an offence punishable on summary conviction.**

References

Chapter 3: Recommendations

[1] Canada. *Report of the Royal Commission to Investigate the Penal System of Canada*. Ottawa: King's Printer, 1938.

[2] Canada. Department of Justice. *Report of a Committee Appointed to Inquire into the Principles and Procedures followed in the Remission Service of the Department of Justice of Canada*. Ottawa: Queen's Printer, 1956.

[3] Canada. *Report of the Royal Commission on the Criminal Law Relating to Criminal Sexual Psychopaths*, Ottawa: Queen's Printer, 1958.

[4] Canada. Department of the Solicitor General. *Report of the Canadian Committee on Corrections*. Ottawa: Queen's Printer, 1969.

[5] Law Reform Commission of Canada, *Report on Sexual Offences* (Ottawa: Supply and Services Canada, 1978) at 7.

[6] See Packer, *Criminal Code Revision* (1973), 23 U.T.L.J. 1; and Hogan, "On Modernising the Law of Sexual Offences" in Glazebrook, ed., *Reshaping the Criminal Law* (London: Stevens and Sons, 1978) at 174. For a more general perspective, see Packer, *The Limits of The Criminal Sanction* (Stanford: Stanford University Press, 1968) at 261-69 and 296-331.

[7] *Cf.* Wechsler, *Revision and Codification of Penal Law in The United States* (1983), 7 Dalhousie L.J. 219; and Hall, "The Three Fundamental Aspects of Criminal Law" in Mueller, ed., *Essays in Criminal Science* (London: Sweet and Maxwell, 1961) at 159.

[8] Canada. Department of Justice. *Sentencing Practices and Trends in Canada*. Ottawa, 1983. Volume 1, pp. 57-58.

[9] *Cr. Code*, s. 146 (1). Section 140 of the *Code* provides that, "where an accused is charged with an offence under section 146 in respect of a person under the age of fourteen years, the fact that the person consented to the commission of the offence is not a defence to the charge.

[10] *Cr. Code*, ss. 146(2) and 146(3).

[11] See Law Reform Commission of Canada, *Working Paper 22: Sexual Offences* (Ottawa: Supply and Services Canada, 1978) at 26-27.

[12] Policy Advisory Committee on Sexual Offences, *Report on the Age of Consent in relation to Sexual Offences* (London: H.M.S.O., 1981) at 9.

[13] *Ibid.*, at 5. For the English experience concerning sexual offences involving young persons who are close in age, see generally Walmsley and White, *Sexual Offences, Consent and Sentencing, Home Office Research Study No. 54* (London: H.M.S.O., 1979).

[14] The Law Reform Commission of Canada has recommended that the incest offence be abolished: *Report on Sexual Offences*, *supra*, note 5 at 25-29; and *Working Paper 22: Sexual Offences*, *supra*, note 11 at 30-34.

[15] Criminal Law Revision Committee, *Working Paper on Sexual Offences* (London: H.M.S.O., 1980) at 42. The Scottish Law Commission has also advocated the retention of incest as a specific offence with no minimum age: *Memorandum No. 44, The Law of Incest in Scotland*, paragraphs 6.7-6.11.

[16] The Law Reform Commission of Canada has recommended that the incest offence be abolished: *Report on Sexual Offences*, *supra*, note 5 at 25-29; and *Working Paper 22: Sexual Offences*, *supra*, note 11 at 30-34.

[17] Law Reform Commission of Canada, *Report on Sexual Offences*, *supra*, note 5 at 26.

[18] *Cf.* Criminal Law Revision Committee, *supra*, note 15 at 46.

[19] The Committee disagrees with the conclusions of the Law Reform Commission of Canada in this respect: see the Commission's *Report on Sexual Offences*, *supra*, note 5 at 30; and its *Working Paper 22: Sexual Offences*, *supra*, note 11 at 34-36.

[20] For example, in *R. v. Bourne* (1952), 36 Cr. App. R. 125 (C.C.A.), the accused compelled his wife to have sexual connection with a dog.

[21] *Cr. Code*, s. 155.

[22] See *R. v. Baney*, [1972] 2 O.R. 34 (C.A.); and *R. v. MacCallum*, [1970] 2 C.C.C. 366 (P.E.I.S.C.). This holding with respect to the former offences of "indecent assault" would also apply, by parity of reasoning, to the "sexual assault" offences in sections 246.1, 246.2, and 246.3 of the *Cr. Code*.

[23] The Committee's proposal is in similar terms to s. 1(1) of the English *Indecency With Children Act 1960*, 8 and 9 Eliz. 2, c. 33, which was enacted in order to remedy a similar problem in the English criminal law of sexual offences.

[24] See Nadin-Davis, *Making a Silk Purse? Sentencing: The "New" Sexual Offences* (1983), 32 C.R. (3d) 28, especially at 43.

[25] Law Reform Commission of Canada, *The General Part: Liability and Defences. Working Paper 29* (Ottawa: Supply and Services Canada, 1982). Appendix A: "Consent", at 137.

[26] Stephen, *A Digest of the Criminal Law (Crimes and Punishments)* (London: Macmillan, 1877). The provisions were articles 203-209. One of these provisions, article 205, dealt with the situation where a person is incapable of giving consent, in this case consent to a surgical operation. Unfortunately, the Royal Commission on the 1879 English *Draft Code* (see note 29, *infra*), of which Stephen was a member, deleted the reference to consent, so that what had been article 205 subsequently appeared in the *Draft Code* and in our *Criminal Code* without any mention of consent (see *infra*, notes 28 and 33). As a result of this deletion and the decision not to include article 204 of the *Digest* (which provided that every one has a right to consent to a surgical operation) in the *Draft Code*, the application of the *Criminal Code* section has until recently been misunderstood. For the history and interpretation of the section, see Starkman, *A Defence to Criminal Responsibility for Performing Surgical Operations: Section 45 of the Criminal Code* (1981) 26 McGill Law Journal 1048, and the same author's *Sterilization of the Mentally Retarded Adult: the Eve Case* (1981) 26 McGill Law Journal 931, at 935-937.

[27] *Supra*, note 25 at 137: "[I]t is not something which the defendant has to prove". See also Glanville Williams, *Criminal Law: The General Part* (2nd ed. London: Stevens, 1961) at 909-910 where, however, the author is discussing the meaning of "defence" in the context of the burden of proof.

[28] Article 205 (surgical operation on person incapable of giving consent: *Draft Code*, section 67), and article 207 (no right to consent to have death inflicted upon oneself: *Draft Code*, section 69). Stephen, *supra*, note 26, 4th ed. (1887) at 148, note 2, and 149, note 1 states that the two consent provisions from the *Digest* were included in the *Draft Code*.

[29] *Report of the Royal Commission Appointed to Consider the Law Relating to Indictable Offences: With an Appendix Containing a Draft Code embodying the Suggestions of the Commissioners* (London: Eyre and Spottiswoode, 1879) at 17.

[30] See, for example, the discussion of consent in the Law Reform Commission of Canada's Working Paper 26 on *Medical Treatment and Criminal Law* (Ottawa: Supply and Services Canada, 1980). Chapter 23 of Professor Glanville Williams' *Textbook of Criminal Law* (London: Stevens, 1978) "is chiefly concerned with consent to what would otherwise be an offence against the person" (at 504, note 1). The chapter provides a valuable discussion of the general principles relating to consent, including consent by children.

[31] *Draft Code*, sections 20 and 21.

[32] *Criminal Code*, sections 12 and 13.

[33] *Criminal Code*, section 14 (consent to have death inflicted upon oneself), section 45 (surgical operation on person incapable of giving consent). For the history and interpretation of section 45, see Starkman, *supra*, note 26. The Law Reform Commission of Canada, *supra*, note 25, considered that section 14, which provides that no person is entitled to consent to have death inflicted upon him: "is strictly surplusage" because "consent is quite irrelevant to homicide offences" (at 137). In the *Digest*, the principle in section 14 was part of a group of seven consent provisions in which the author explained the extent to which consent affects the criminality of certain acts. Homicide was dealt with elsewhere in the *Digest*. Explanation by way of principles

makes the criminal law more accessible. Professor Glanville Williams explains the effect of consent as well as the crime: "[K]illing by consent ... is still generally murder" (*Textbook of Criminal Law*, *supra*, note 30 at 531).

[34] *Supra*, note 25 at 36-41.

[35] *Constitution Act, 1867*, s. 91 (27).

[36] *Constitution Act, 1867*, s. 91.

[37] *Tobacco Restraint Act*, R.S.C. 1970, c. T-9. See *R. ex rel Barrie v. Stelzer* (1958), 119 C.C.C. 305 (Man. C.A.).

[38] *Hazardous Products Act*, R.S.C. 1970, c. H-3. See *R. v. Zellers Ltd.* (1982), 66 C.C.C. (2d) 236 (Man. C.A.); and *R. v. Cosman's Furniture (1972) Ltd. et al* (1976), 73 D.L.R. (3d) 312 (Man. C.A.).

[39] *A.G.B.C. v. Smith* (1967), 65 D.L.R. (2d) 82 (S.C.C.).

[40] *R. v. Hauser* (1979), 98 D.L.R. (3d) 193, at 210 (S.C.C.), *per* Pigeon J. In the *Hauser* case, the federal *Narcotic Control Act* was upheld, not under the criminal law power, but under Parliament's authority to enact laws for the "peace, order, and good government of Canada".

Part II

Extent of the Problem

Chapter 4

Advisory Reports and Previous Research

Known child sexual abuse is a fraction of its true occurrence. Much more crime involving sexual offences occurs than is detected or reported. Of the cases that are reported, only a proportion results in the laying of charges by the police, and of these cases, still fewer end with convictions. Only the most visible acts are cited by the media and these are usually restricted to those incidents involving serious crimes of sexual violence, or to those in which charges are laid and court hearings held. Police practices which on occasion may involve charging the accused with crimes other than sexual offences, and court practices restricting publicity, result in many cases of child sexual abuse known officially being masked from public attention.

Beneath the visible tip of child sexual abuse known to the police and the courts is a more sizeable number of partially hidden cases cared for by medical and child protection services and other community agencies. Legal sanctions are invoked in relatively few of these instances. When such action is taken, it may be under statutes other than the *Criminal Code* or action may be taken on other grounds such as the neglect of a child or a child being in need of protection. In a majority of instances in which charges are not laid the attending physicians and social workers refrain from reporting these cases to the police because they believe that the available evidence is inadequate, that the acts occurred in the past and have stopped, or that even if evidence is deemed to be sufficient, to proceed with laying charges would inflict greater harm on the child than would resorting to other, less official means of intervention. Such decisions rest in part on the beliefs that maintaining the unity of the family is of over-riding importance and that treatment and counselling are more effective ways of stopping these acts than seeking the punishment of offenders.

Evidence concerning the actual extent of child sexual abuse is fragmentary. There is no doubt that the true prevalence of these offences is unknown to the official helping services. The reasons why so many victims of child sexual abuse remain silent are documented elsewhere in this Report. They include an unawareness by the very young child that a crime has been committed, a deep-rooted shame associated with having been a victim, feelings of helplessness and a lack of self-worth, the disbelief and rejection by those persons who are close to the child and a fear of reprisal by offenders.

Telling others these closely guarded secrets requires considerable personal courage, since doing so invokes stigma, may result in the condemnation by family members or by persons who are responsible for their care and may lead to an external professional scrutiny of intensely personal concerns. There is much ignorance and uncertainty among victims about to whom they can turn for help. On occasion, when they do look for help, they may withdraw prematurely from seeking further aid if they feel they are disbelieved or are rebuffed by the offensive nature of the assistance which is provided.

While there is broad agreement about the sequence of attrition from the actual occurrence of child sexual abuse to the subsequent conviction of only a few of the offenders who committed these crimes, there is no consensus about how many children are involved at each stage or on the adequacy of the information upon which the various estimates of sexual abuse are based. The three principal views are that: child sexual abuse is widely prevalent; it seldom occurs; and since none of the sources is accurate, no valid estimates can be made.

Much has been said in recent years about the alarming extent of child sexual abuse in Canada. From this perspective the problem has become a widespread crisis warranting massive public intervention and assistance. In the absence of firm and sufficient sources of information, high rates are cited as established facts, proven solutions for the helping services are proffered and experts are called upon by child protection services and the courts for their counsel about the documented profiles of abused victims or child sexual offenders. Because these reports of high rates are often believed to be true, a self-fulfilling prophecy occurs. The reports are acted upon subsequently as though they are true with the validity of the initial sources on which they were based being forgotten or disregarded.

One major Canadian report stated that based on "reliable estimates", one in four girls and one in 10 boys were sexually assaulted at some point in their lives, or about 1.5 million Canadian children were the victims of these offences.[1] In the course of its work the Committee heard estimates given by professionals across Canada which ranged from one in 200 children to the assertion that every Canadian child at some point had been sexually assaulted. The rates most widely cited by the media and reported at special conferences dealing with these problems were that one in five girls and one in 10 boys were sexually assaulted before they became adults.

Indicating the divided nature of opinion about the occurrence of child sexual abuse, another attitude held by some Canadians was that few children were affected by these problems. At the same time, professionals have told the Committee that after special conferences on child sexual abuse were held in their regions, many more instances of such abuse were reported. If a problem is not recognized, there is little likelihood that it will be seen to occur. Once the problem is publicized, incidents will be seen to occur more often. Persons holding the view that few children are affected by sexual abuse, or who believe that unmet needs are virtually infinite and can be documented to justify the pur-

poses of special interest groups, help to perpetuate the comfortable myth that since few instances of sexual offences against children are seen to occur, there is little or no need to provide special protection for them.

At one major medical centre serving a large region, a senior professional told the Committee that there were no known instances of sexual offences against children. In another sizeable city, a highly trained specialist said that information on child sexual abuse should not be collected since doing so would disrupt the lives of many otherwise normal families. In a provincial capital a senior official questioned the utility of the findings of any survey, noting that existing resources were already strained to capacity, and for this reason, no new unmet needs should be documented. In another province the Committee was informed that professional workers were too busy providing services to have time to document fully what was being done and since each case of child sexual abuse was unique, there was no relevance in marshalling survey findings about these problems. These examples illustrate why in some quarters few instances of child sexual abuse were known to occur and why it was concluded that no changes were warranted in dealing with these issues.

In constrast with the views either that child sexual abuse is a widespread problem or that it seldom occurs is a critical viewpoint that assumes it is not possible to document the prevalence of sexual offences or that rejects all available sources on the grounds that they measure inadequately the extent of these problems. The former view was held in the 1957 British study on *Sexual Offences* that noted: "The actual number of sexual offences committed is unknown and consequently, the actual number of victims cannot be ascertained."[2] The sources of information about crime that are rejected on the basis of how findings are collected and classified include: the official crime reports assembled by police forces; victimization surveys in which persons report crimes committed against them; studies of persons, often juveniles, who report minor crimes they have committed; and the indicators derived from these sources which gauge the relative gravity of the occurrence of known offences. An anomaly about what is known of crime in Canada is that while some researchers reject existing sources of information as being inadequate, they ignore this caveat when they portray the attrition of crime from its occurrence through to the stage of the conviction of offenders.

In the 1969 *Report of the Canadian Committee on Corrections* (Ouimet Report), it was concluded:

> The corrections field in Canada . . . has suffered from a lack of comprehensive, continuous and long-term planning based, as far as possible, on empirical information . . . little use has been made of research . . . Research answers to many criminological problems are not available, nor have research techniques or facilities been developed that could supply all the answers . . . In terms of the peculiar society that is ours . . . what has been discovered in other countries cannot be applied to Canada without re-examination.[3]

That inadequacies in the types of information about crime in Canada still abound was re-affirmed by the 1982 *Report on The Criminal Law in Canadian Society* of the federal Department of Justice.

> The first comment made in Ouimet's chapter on crime (concerning the lack of reliable information) is, if anything, more applicable today. There are no data on convictions since 1973. One must rely on reports made to police—reported crime, not convictions. And the reliability of these data has been questioned.[4]

Much of the information reviewed by the Committee is based on the experience of sexually abused children who were treated by physicians or social workers or who were known to the police and the correctional services. In each instance in the surveys undertaken by the Committee, more detailed information was obtained from these sources than was available in the published annual statistics of these services. As noted in the two federal reports, an obstacle inherent in official Canadian crime statistics between 1969-82 is the absence of sufficiently precise information and the reliance upon non-uniform systems of classification. The *Uniform Crime Report's Statistics* assembled by Statistics Canada from police forces across the country, for instance, do not give information about the victims of crimes or their ages. The actual counting of criminal acts in these statistics varies for offences involving property or offences against the person; no specific sexual offences are listed with these crimes being grouped under a few broad categories.

A comparable situation exists involving the statistics assembled for medical and child protection services in which child sexual abuse either is not recognized in the classification codes (e.g., the *International Classification of Diseases*), or in which no uniform basis has been established to identify these abuses (e.g., child protection statistics). From neither of these sources is it feasible to determine how many children have been raped, who are the victims of incest or what other types of sexual abuse may have occurred.

Even given the lowest estimates of the extent of child sexual abuse in Canada, the problem is a matter of grave public concern. Until more reliable and comprehensive information is available, it will remain a matter of conjecture how many Canadian children are sexually assaulted. This is a valid concern. However, the Committee believes that at the level of what is now known about these offences, it is crucial to understand why sexually assaulted children do or do not seek help, the nature of the harm done, the scope and adequacy of the services provided for their care and protection and what steps it is feasible to take to prevent and limit the occurrence of these acts.

While recognizing the limitations of the findings given in advisory reports and available research studies, the Committee drew upon these sources as a contributory basis for its review and the mounting of its research. Rather than undertaking the futile exercise of pitting the findings of different sources against each other, the Committee believes that the complexity of the issues raised by sexual offences against children requires drawing upon the complementary experience of all services that come in contact with these children. In this respect no single source should or can be relied upon by itself to provide sufficient information.

Legislative and Advisory Reports

During the 1970s the Government of Canada received reports with findings and recommendations from several legislative and advisory bodies with respect to the need to provide more effective protection for abused and neglected children. Acting in response to these reports, the Government: initiated and/or sponsored a number of projects on these issues; convened two national meetings to review the findings of a national child abuse study; extended support to crisis information services through cost-sharing arrangements with the provinces; and in 1978 created a federal desk for a Child Abuse Information Program that was incorporated in 1982 within the mandate of the National Clearinghouse on Family Violence.

With respect to sexual offences committed against children, legislation was tabled in Parliament in relation to some aspects of these problems. A review of these statutes is given in Part Three of the Report. In addition, stemming from the recommendations of these various advisory bodies, this Committee was appointed in recognition of the need for a more complete review than was then available of the extent of these offences and to consider how children might be better protected in this regard.

The initial proposals at the national level on ways to provide better protection for child abuse were made by two Standing Committees of Parliament. These reviews were undertaken by: the *Standing Committee on Health, Welfare and Social Affairs of the House of Commons*; and the *Standing Committee on Health, Welfare and Science of the Senate*.

In accordance with its Order of Reference of December, 1974, the *Standing Committee on Health, Welfare and Social Affairs* of the Commons was asked to make recommendations with respect to "appropriate measures for the prevention, identification and treatment of child abuse and neglect, and for such other ancillary measures in the same matter as the Committee may consider desirable".[5] In the course of its sittings, the *Standing Committee* received testimony from expert witnesses, reviewed briefs and assessed the findings of a number of research reports.

While the *Standing Committee* recognized that child sexual abuse was a serious problem, it considered this issue within the context of the broader problem of child abuse and neglect. Among its central findings, the *Standing Committee* noted that:

1. Because of variations in definitions and reporting systems, there was no accurate figure on the occurrence of child abuse for Canada.
2. There was no one cause of child abuse or neglect.
3. The physical abuse of children was the extreme end of the continuum of child neglect.

4. The federal government had a role in respect to child abuse that was reflected in the *Criminal Code*, cost-sharing arrangements with the provinces and territories, grants for research and demonstration projects, and other consultative services.

5. Criminal proceedings, which were designed to punish the offender could be applied only in those cases where there was sufficient evidence to justify such proceedings, and such proceedings were probably not applicable in most cases because of the rules of evidence and other requirements.

6. The *Criminal Code* offered little by way of preventing or treating child abuse except that a conviction for an offence under the *Code* may remove the offender from contact with the child.

7. The reporting requirements in provincial laws with respect to the notification of child abuse were not generally understood.

8. The services available concentrated on the child after the problems had become known rather than focussing on assistance to families before a crisis had occurred.

9. Each case of child abuse must be treated on the basis of individual need and the unique circumstances of the case.

10. The public demand for punishment of offenders may cloud both the real issues of child abuse and the provision of services for families at risk.

In its Report to the House, the *Standing Committee* made 15 recommendations. These recommendations included:

1. *Preventive Services:* Support was recommended for a broad range of preventive measures. It was acknowledged that: "every child be entitled to adequate protective services in his own home and that these services include support services to parents as well as health and other community services to the child in his own right."[6]

2. *Research:* It was recommended that the Department of National Health and Welfare consider the advisability of ensuring that funds were available for research and demonstration projects relating to all aspects of child abuse, including: its etiology, identification and "the periodic follow-up, evaluation and cost-effectiveness of the program of preventive services."[7]

3. *Statistics and Information:* It was recommended that the Department of National Health and Welfare consider the advisability of providing assistance to the provinces with respect to the establishment of:

   (i) a common data base on all substantiated cases of child abuse and for facilitating an exchange of information between provinces when persons active in a registry move from one province to another;

   (ii) promoting an exchange of information on these issues by convening meetings; and

   (iii) serving as a resource to the provinces on developments across the country in legislation, programs and services in child and family services, including services for the prevention of child abuse.

4. *Canada Evidence Act and the Criminal Code:* Amendments were recommended permitting a spouse to give evidence in criminal cases involving child abuse. The Standing Committee concluded there was no need: to amend the *Criminal Code* with respect to a mandatory reporting requirement in cases involving child abuse; and for the establishment of a federal child abuse registry.

5. *Public and Professional Education:* It was recommended that the Government consider means of extending public education on these issues through the media by the promotion of public affairs' programs on child care, family living and child abuse; that professional schools broaden the contents of their curricula by the inclusion of materials on the etiology of child abuse; and that training in child care be promoted in primary schools with additional courses given in secondary and post-secondary schools.

The second legislative review by the federal Government during the 1970s relating to child abuse was undertaken by the *Standing Committee on Health, Welfare and Science of the Senate*. In December, 1975, the Order of Reference given to the *Standing Committee* requested it to consider the feasibility of a Senate investigation on "Early Childhood Experiences as Causes of Criminal Behaviour". As a result of its initial review in which it was found that available information was "scant, highly technical and mostly American",[8] the *Senate Standing Committee* limited its inquiry to a consideration of the experience of children during the first three years of life.

The *Standing Committee* received testimony from a number of specialists, reviewed briefs and assessed several research reports. In tabling its Report in 1980, *Child at Risk*, the *Senate Standing Committee's* recommendations included:

1. A review be made of the offences specified in the *Criminal Code* with respect to those pertaining to all forms of child abuse.

2. An assessment be made of the purposes and effectiveness of existing child protection services and relevant legislation as these pertained to children in need of protection.

3. Support be given to expand the services provided by local child abuse and information programs.

In addition to its recommendations pertaining to child abuse, the *Standing Committee* also recommended that the federal Government establish a Canadian Institute for the Study of Violence having an independent board representing a broad spectrum of disciplines. The mandate for the Institute would include:

1. The co-ordination and evaluation of research on early childhood experiences as causes of violent behaviour in later life.

2. The funding of new research and pilot projects on vulnerable children.

3. The scheduling of opportunities (through workshops, research, journals) for members of different disciplines to review these issues.

4. To make recommendations about methods of reducing the incidence of violence in Canada.[9]

Between 1975 and the early 1980s, the *Advisory Council on the Status of Women* recommended that amendments be made to several sections pertaining to sexual offences in the *Criminal Code*. In October, 1975, the *Advisory Council's* brief on Bill C-71 recommended that evidence of previous sexual behaviour of a complainant with persons other than the accused should not be admissible and that a number of sections in the *Code* be replaced with broader categories of sexual assault. With respect to amendments related to the protection of children, the *Advisory Council* proposed that existing sections be altered to include sexual intercourse with children, the relatives of a minor, and any minor who was subject to authority by another person.

In expanding these proposals in 1976, the *Advisory Council* recommended that the *Criminal Code* be amended to make provision for four degrees of sexual assault.[10] As part of this redrafting of legislation, it was recommended that "protection from sexual intercourse ... be provided to all persons under 14 years of age, whether they be male or female. It is our belief that a person under the age of 14 years is a child and lacks the experience or capacity to make decisions concerning sexual relations".[11] It was proposed that the following sections of the *Criminal Code* should be deleted.

- Section 144 (rape)
- Section 145 (attempted rape)
- Section 146[1] (sexual intercourse with a female under 14)
- Section 146[2][3] (sexual intercourse with a female between 14 and 16)
- Section 148 (sexual intercourse with feeble-minded)
- Section 149 (indecent assault on a female)
- Section 150 (incest)
- Section 151 (seduction of a female between 16 and 18)
- Section 152 (seduction under promise of marriage)
- Section 153 (sexual intercourse with female employee, step- daughter, foster daughter or female ward)
- Section 154 (seduction of female passengers on vessels)
- Section 155 (buggery or bestiality)
- Section 156 (indecent assault on a male)
- Section 157 (acts of gross indecency)

In making these proposals the *Advisory Council* stated "that laws against sexual assault should apply to all persons regardless of their sex, age, marital status or previous sexual conduct and recognize that all persons' sexual integrity should be respected and when necessary protected".[12]

In reiterating its position in 1979, the *Advisory Council* recommended that young persons should be protected from sexual exploitation by the specification of:

1. A statutory sexual offence applying where the victim is under 14 years.
2. An offence prohibiting the sexual coercion of young persons under 18 years by someone in a position of authority over them.

A number of the recommendations that had been made by the *Advisory Council on the Status of Women* with respect to amendments to the sexual offences in the *Criminal Code* were incorporated in Bill C-127 (1983).

The *Canadian Commission for the International Year of the Child* was established in 1978 with the objective of identifying and supporting activities that were designed to advance the rights, interests and well-being of children. The *Commission* reviewed some 4000 applications, of which 500 were funded. In its report, *For Canada's Children: National Agenda for Action,*[13] the *Commission's* recommendations included:

1. *Knowledge of Human Sexuality:* Children and youths have "the right to knowledge of the psychology of human sexuality, given in a medical or public health setting or in an appropriate agency by qualified people".[14]
2. *Protection from Sexual Exploitation:* That "the federal government enact legislation to protect children against all forms of sexual exploitation".[15]
3. *Child Pornography:* Children have "the right to be protected from premature exposure to, or erroneous information about human sexuality and from degrading and debased images of sexual behaviour in human beings".[16]
4. *Media Presentation of Sex and Violence:* "The producers and directors of television programs [should] reduce the present emphasis on sex and violence.".[17]
5. *Reform of Sex Crime Laws:* With respect to the proposals pertaining to children, the Commission commended the recommendations on amendments to the sexual offences in the *Criminal Code* made by the Advisory Council on the Status of Women relative to Bill C-53 and Report Number 10 on *Sexual Offences* of the Law Reform Commission of Canada.[18]

As part of its program of legislative review, the *Law Reform Commission of Canada* issued a working paper on Sexual Offences in 1978.[19] Based on response that the *Commission* received to this report, a revision was reissued later that year.[20] A number of the legal issues raised in this report are considered elsewhere in more detail in the Committee's Report.

The *Law Reform Commission of Canada* called for a sweeping reform of some of the sections relating to sexual offences in the *Criminal Code*. It recommended that these sections be replaced or revised by two new categories of prohibited sexual conduct that were comprised of sexual interference and sexual aggression. With respect to the protection of the child, the *Commission* recommended that in line with its proposals, there be absolute protection under the

law for children under the age of 14 years and qualified protection for youths between ages 14 and 18 years.

The *Commission* proposed the enactment of a new offence, sexual interference due to dependency; this new statute would replace a number of existing sections of the *Criminal Code* including the offence of incest. The rationale underlying this latter recommendation was that "the Commission believes that incest should above all be a matter of social and psychological treatment; secondly, a matter of regulation by family and child welfare law; and only thirdly, a matter for the criminal law".[21] The *Commission's* recommendations like those of other advisory bodies were considered in the drafting of Bill C-53 that was tabled in Parliament on December 19, 1980.

As part of its commitment to the International Decade for Women: 1976-85, the Department of National Health and Welfare established the *Advisory Committee on the Status of Women*. The activities assigned to the *Advisory Committee* included a consideration of the issues of: violence against women; violence in the family; and crisis intervention. In the first report on its activities issued in 1980,[22] the *Advisory Committee* noted that the Department was undertaking a review of child abuse that had been established in November, 1978 in response to the recommendations of the Standing Committee on Health, Welfare and Social Affairs of the House, as part of Government's commitment to the International Year of the Child and stemming from consultation between the federal and provincial governments.

The two discussion papers that were prepared for the *Child Abuse Study* of the Department of National Health and Welfare were reviewed at meetings held in 1980 and 1981. Proposals were made at these meetings which were attended by representatives of some of the major child care service programs across Canada that steps be taken by government to review, and where appropriate, to implement the study's recommendations. The reports, an *Outline of Key Legislative Issues relating to Child Abuse* (1980) and *Child Protection in Canada* (1980), were issued as discussion papers in order "to promote a better understanding" of these issues. In the Preface to each report it was noted that the recommendations of the *Child Abuse Study* had "no formal status in terms of either official acceptance by the Department of National Health and Welfare or as a statement of government policy."[23]

The recommendations of the *Study's* first discussion paper, an *Outline of Key Legislative Issues relating to Child Abuse* (1980), included:

1. *Child Welfare Statistics:* Existing provincial statistics use different bases, definitions and classifications, "are not usually published, and if published, the categories chosen for publication differ from one jurisdiction to another"; legislative provisions should require the publication of certain basic statistics and "the federal government could undertake the responsibility for collating and publishing this information on a national basis."[24]

2. *Open or Closed Protection Hearings:* That the public needs greater knowledge about child abuse cases, and in this regard, "protection hearings

should be open to the public, reported by the press without an absolute ban on publishing any identifying information."[25]

3. *Child's Evidence before the Court:* It was recommended that "child protection legislation should require the child to be properly observed and interviewed by an independent psychiatrist or psychologist" and that this information should "be properly recorded and accepted by the court as evidence going to the truth of the matters stated or observed."[26]

4. *Child Protection Advocate:* It was recommended that the interests of the child be represented by a child protection advocate who would work independently of child protection services. Under this procedure child welfare services would be required to notify immediately the advocate of all suspected child abuse cases, the investigation would be under the authority of the advocate and be undertaken by an interdisciplinary team, and based on this review, the advocate would then be responsible for the decision of whether a court application should be made, and if this were done, the advocate would represent the interests of the child throughout the court proceedings.

5. *Reasons for Judgment:* Noting that written judgments were "not usually given in protection cases" and "even when written, they are rarely reported", it was recommended that there be "a statutory provision requiring the court to give adequate reasons for judgment" and where reasons are given orally, that they be transcribed by the court reporter, and copies be maintained in court files.

6. *Role of Criminal Law:* "Where there is a reasonable chance of successfully treating the abusive parent, therapy is preferable to criminal prosecution . . . imprisonment has rarely proven a successful method of rehabilitation."[27]

The second discussion paper of the Department of National Health and Welfare's *Child Abuse Study* expanded upon some of the recommendations of the first report and dealt in greater detail with aspects involving the provision of services for abused children. The recommendations of this report, *Child Protection in Canada* (1981), included:[28]

1. *Child Protection/Welfare Statutes:* That these statutes be amended with respect to the definitions of a child in need of protection, the concept of abuse be set aside in favour of more specific categories, and consideration be given to whether a child's condition should be tied to the conduct of parents.

2. *Child Abuse Registries:* That all provincial child protection statutes should stipulate mandatory reporting, that the persons making reports should be notified of the decisions taken, and that a central registry should be established that would enable the identification of children who are repeatedly abused, the listing of the families that moved between jurisdictions and the compilation of national statistics on reported cases of child abuse.

3. *Service Statistics:* That the provinces and territories maintain information on: the basic reasons for children being in protective custody; a specification of the problems experienced by these children; and a listing of the ser-

vices provided for them; and that the federal government should provide financial assistance to the provinces to establish the collection of these statistics.

4. *Deaths of Children in Need of Protection:* Based on a review of 54 deaths (none resulting from sexual assault), it was recommended that: efforts be made to obtain more accurate information on the extent of child deaths resulting from abuse; that coroners receive training in the recognition of the signs of child abuse; that deaths of this kind should be incorporated into a central registry; and that more indepth research on these issues was warranted.

5. *Child Protection Teams:* Based on a detailed review of the structure and operation of a number of child protection teams, it was recommended that: all cases of child abuse should be handled by an interdisciplinary team comprised of the disciplines of social work, paediatrics, nursing, psychiatry, psychology, Crown attornies and the police; that these teams operate independently of child protection services and hospitals; that the teams have the authority to require other social agencies to provide services under team supervision; that where legislation or policies on confidentiality prevented or inhibited the exchange of information on a child between services, the legislation should be amended in this regard; that the teams should receive funding from several ministries; that financial support be given to the establishment of a number of pilot projects on a three year basis for purposes of demonstration, evaluation of services provided, and benefits received by children; and that the Department assist actively in the establishment of these teams by means of fostering research, the scheduling of meetings between existing programs and the publication and exchange of information.

In addition to its detailed recommendations, the Department's *Child Abuse Study* concluded that:

> Very little material on the problem of child protection has been published and widely circulated in Canada . . .
>
> The public has both a right to know and a need to know more about the problem. It is therefore recommended that the Department of National Health and Welfare, prepare and publish an annual report on child protection in Canada including national statistics, a review of legislation and policies in Canada, developments in selected foreign jurisdications, an analysis of significant judicial decisions and other relevant and useful information.[29]

In addition to the reports on child abuse and neglect undertaken by legislative and advisory bodies at the national level during the 1970s, numerous reviews containing recommendations were made at this time by voluntary associations and provincial and municipal committees. In these respects, the interests of the child have been strongly presented. There is, however, a considerable shortfall between the recommendations that have been made by these sources and the steps that have been subsequently taken. It is apparent from the Committee's review that, for whatever reasons, most of the recommendations of these various reports have not yet been implemented and that the actions that have been taken are seldom commensurate with the intent of the bodies making these proposals.

In considering the recommendations of the various legislative and advisory committees, it is evident that the feasibility of implementing many of these proposals is limited by constraints that are inherent in the administration and provision of child protection services. Foremost among these limitations is the divided constitutional authority between federal and provincial levels for ensuring protection for the health and welfare of children. At the level of providing services directly to children, there is a further division of responsibilities between several helping professions, each of which specializes in a particular aspect of child abuse and in each instance having their work governed by different statutes. In this situation of divided legislative and service responsibilities, recommendations made to one level of government or pertaining to only one facet of child abuse, cannot be expected to achieve a comprehensive reform of child protection services for children who are abused and neglected.

Several of the reports on child abuse prepared by national advisory committees recognized the need for better information and research on the extent of these problems, the special needs of abused children and the effectiveness of services that were provided on their behalf. The earlier reports considered the broader aspects of child abuse while in later reviews, more attention was given to the issues of child sexual abuse and changes in the sexual offences in the *Criminal Code*. With respect to child sexual abuse, a number of admirable ameliorative proposals were recommended but in most instances the evidence to support them was still lacking. For the most part, these reports drew selectively, and in some instances not at all, on the research on sexual offences that had been completed for Canada at the time when the reviews were being undertaken. The reports of the advisory bodies serve to highlight the broadening recognition of the problem of child sexual abuse and the identification of special issues warranting more detailed documentation and consideration with respect to how these children might be better protected.

Child Abuse Information Program

As an adminstrative means to review the reports and recommendations of the legislative and advisory bodies, the Department of National Health and Welfare struck an *Ad Hoc Committee on Child Abuse* which consulted with agencies in the private sector and provincial child protection services. The *Ad Hoc Committee* recommended in 1978 that a federal desk be established which would assemble and distribute information for Canada on child abuse and neglect. This program was approved at the end of that year.

At this time an interdepartmental committee, established in relation to the International Decade of Women, was reviewing the problem of family violence with particular attention being given to the situation of battered women. In its first annual report (1980), the *Advisory Committee* reported that:

> As a service to groups offering assistance to victims of family violence and rape, Health and Welfare Canada will establish, by 1980, a National Clearinghouse for legal, research and service information and technical assistance.[30]

In January, 1982, the Minister of National Health and Welfare announced the establishment of the *National Clearinghouse on Family Violence*. The previously established federal desk for the Child Abuse Information Program was incorporated into the work of the *Clearinghouse*. During its initial period of operation, this unit had a complement of two staff positions.

The mandate assigned to the *Clearinghouse* dealt with four problems, each of which involved some form of abuse or violence. These issues included: family violence; battered women; child abuse; and the abuse of the elderly. In relation to these problems, the responsibilities assigned to the *Clearinghouse* were:

1. *Information and Statistics:* The collection, analysis and dissemination of information on: the occurrence of these problems; the services being provided; the legal issues involved; the development and collation of training materials for professional service workers; the preparation and listing of audio-visual materials; and other sources of information which pertained to these issues.

2. *Consultation:* The *Clearinghouse* was established as a resource for consultation to the federal and provincial governments on issues related to family violence.

3. *Technical Assistance:* The provision of technical aid to professionals and the public in relation to the four issues falling within its mandate.

In a report on the work undertaken by the *Clearinghouse* that was prepared for the Committee, it was noted that the following activities had been initiated.

1. *Bibliographies and Information Kits.* The preparation and distribution of a number of bibliographical inventories and information kits.

2. *Newsletter.* A newsletter setting out the objectives and activities of the *Clearinghouse* had been prepared.

3. *Audio-visual Catalogue.* A listing of audio-visual materials had been prepared for circulation to interested professonal and voluntary groups.

4. *Professional Training Manuals.* Materials deemed pertinent for the training of professional workers had been assembled and circulated.

5. *Survey of Transition Houses.* A national survey had been started focussing on the programs and services provided by Transition Houses.

6. *Schools of Social Work.* A survey had been undertaken of the curricula pertaining to family violence that were offered by Canadian schools of social work.

7. *Purchase of Films.* In collaboration with the National Film Board, a number of films had been purchased for the Family Violence Film Library.

During the initial period of its operation the *National Clearinghouse on Family Violence* focussed on the collation and distribution of general sources of information on family violence and child abuse. The available staff resources precluded the undertaking of extensive research on these issues and the more

comprehensive evaluation of the services that were being provided. With respect to child sexual abuse, no special initiative had been undertaken in this regard in recognition of the review that was being made by the Committee.

National Child Sexual Abuse Statistics

The growing recognition of child sexual abuse can be traced in the trends occurring in the reporting of these offences in the annual statistics reports of provincial child protection services. As noted elsewhere in the Report, the classification of these incidents varies between provinces and depends upon somewhat different reporting procedures.

Prior to 1977, there were few references to child sexual abuse in the annual reports of provincial child protection services and few statistics listing these incidents. This situation changed in 1977 when 300 sexually abused children were identified. There was an increase of 431 per cent by 1980 when 1593 cases were reported. The rate of annual increase since 1977 has fluctuated sharply, rising by 6.3 per cent between 1977-78, 275.2 per cent between 1978-79, and 33.0 per cent between 1979-80. These sharp changes are attributable to increased public awareness, significant improvements in the capacities of the reporting systems, and the number of new protection services that were geared to reach these children.

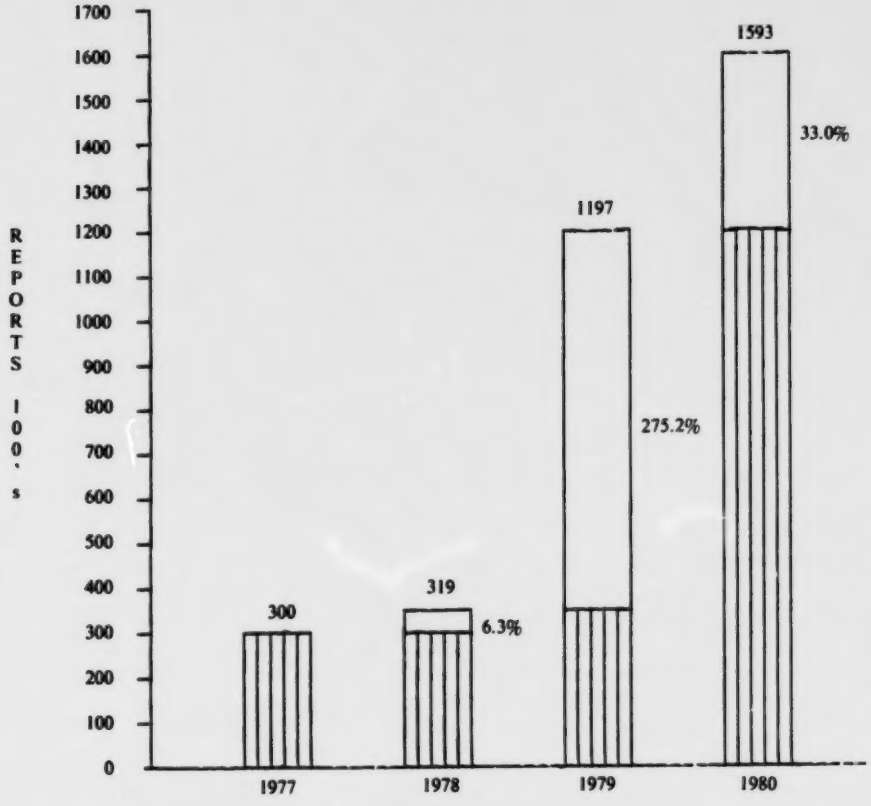
The proportion of Canadian children under the age 16 who were suspected or known by provincial child protection services to have been sexually abused was three in every 1000 children in 1980. No comparable statistics are available for other branches of the helping services (police, health, corrections). As shown elsewhere in this Report, the rates derived from published annual statistical reports of provincial child protection services do not provide an adequate estimate of the known prevalence of sexual offences against children. What these statistics represent, however, is a positive and strong endorsement of the steps that have been taken to strengthen child protection services, leading to the detection of substantially more sexually abused children.

Estimates of Occurrence

Much of the research on the occurrence of sexual offences in Canada comes from studies that were undertaken for other purposes and focusses on the experience of adults. This collection of research is comprised of a mosaic of different groups, definitions and sources of information that has yielded sharply contrasting estimates of the extent of these problems. The estimates that are derived from these research reports vary from well under one per cent to a quarter of all Canadian women having been sexually assaulted. These estimates include:

Chart 4.1

National Child Sexual Abuse Statistics:
Provincial Child Protection Services, 1977-80[1]



[1]Annual Reports, Provincial Child Protection/Welfare Services, 1977-80

Source	Group Studied	Proportion Sexually Abused/ Assaulted
Solicitor General (1979)	10,248 persons over 16 in Vancouver	0.5%
Solicitor General (1981)	817 persons over 18 in Quebec, Ontario, Manitoba	3.6%
Le Comité de la protection de la jeunesse (1978-80)	Child protection cases relative to Quebec population under age 17	0.02-0.04%
Advisory Council on the Status of Women (1976-81)	551 women surveyed in Winnipeg	20.1%
Ontario Rape Crisis Centres (1981)	513 persons seen at five Rape Crisis Centres	25.0%
Canadian Human Rights Commission (1981)	2004 persons in national population survey	48.7% females 33.2% males

The major studies that have obtained information on the reporting of crime by Canadians, some of which have dealt with sexual offences, include:

1. Victimization surveys, or those which have asked Canadians directly if crimes had been committed against them (Toronto, British Columbia, Edmonton, Vancouver, and a national sexual harassment survey).
2. Community surveys for London, Selkirk and The Pas.
3. The experience of sexually assaulted children treated by child protection services in Quebec.
4. The sexual behaviour and knowledge of school children (Saskatchewan, Calgary and Saguenay — Lac St. Jean, Quebec, and students attending an unidentified high school in Quebec).
5. A survey of rapes reported in 1970 to the Toronto Metropolitan Police Force.
6. Sexual assaults committed against women in Winnipeg.
7. Sexually assaulted persons who went to five Ontario Rape Crisis Centres.
8. National opinion surveys on physical child abuse, homosexuality and pornography.

While the case records and investigation files or charts of the helping services contain much valuable information about sexual offences and child sexual abuse, these sources have seldom been drawn upon as a means to document the types of crimes that may occur or how they are handled when they are brought to the attention of these services. The full potential of these sources is not real-

ized when summary official statistics are assembled for purposes of documentary annual reports. An instance of this is the unrealized potential of the *Uniform Crime Report Statistics* assembled annually by Statistics Canada from police forces across the country. While police investigation files contain extensive information about victims, offenders and the incidents that were investigated, little of this information is abstracted in the official statistics.

In the reporting of national crime statistics for Canada, all types of sexual offences are aggregated into a few general categories, a classificatory system that precludes an analysis of particular offences. No information is given in these sources about the victims of the crimes, and for this reason, they cannot be used to assess the reported extent of sexual offences against children. The anomaly is that while such information is available, it has been regarded as more important to list information about crime and offenders than about persons who are victims. These statistical reporting procedures have functioned to mask the extent to which children were involved as victims.

Victimization Surveys

In order to obtain better information about the unreported or "dark side" of crime, a number of surveys have been undertaken across Canada by academic researchers and under the aegis of the federal Department of the Solicitor General. Most of these surveys did not obtain information about sexual offences or the experience of children. Taken together, the victimization surveys indicate that the reporting of the extent of crime varies considerably depending upon which sources are drawn upon and upon which survey procedures are used to collect such findings. The central implication of these studies is that no single survey or source is sufficient by itself but rather, a multifaceted research survey approach needs to be adopted in order to reflect the complex ways in which crime occurs, the range of persons affected and the ways in which it is dealt with.

One of the first victimization surveys undertaken in Canada was a study in the 1960s of 967 Toronto residents, about one in eight (13.0 per cent) of whom had been threatened or physically assaulted during the previous year.[31] Among all types of crime there was a substantially higher reporting to the police concerning property offences (35 to 45 per cent) than by persons who had been threatened or assaulted (12.5 per cent).

These findings about the selective reporting of different types of crime were subsequently confirmed by the more extensive victimization surveys undertaken by the federal Department of the Solicitor General. Along the gradient of crimes reported to the police, those which are least likely to come to their attention, are offences committed against persons, and among these, threats or assaults by strangers or persons who are not well known to the victim are more likely to be reported than those committed by persons known by victims.

Using a different survey procedure, a 1974 study of 956 respondents in British Columbia found that one in 20 (4.3 per cent) had been threatened or assaulted.[32] These incidents were more often reported by younger adults, persons with broken marriages, and three times more frequently by males than by females. In comparison with the victims of vandalism, theft or robbery, more persons who had been threatened or assaulted assessed the work of the police less favourably, and more of them felt the police were too lenient in their handling of suspects. While one in five of all respondents felt the police were too lenient with suspects (20.2 per cent), one in three of the victims of assaults (31.6 per cent) held this view.

During the 1970s the federal Department of the Solicitor General initiated a series of four crime victimization surveys.[33-34] These surveys tested methods of asking Canadians whether they had been the victims of crime, what had happened and to whom they had reported the incidents. The first surveys for Edmonton (1976-77) and Hamilton (1978) drew upon police records, had follow-up contacts with victims known to the police, and tested the feasibility of using a different means of collecting these types of information. While samples were selected of the records of other types of crime, all or a disproportionate number of police general occurrence reports involving investigation of sexual offences were included in these analyses. For this reason, the rates listed for sexual offences (3.01 and 3.28) over-represented substantially their actual proportion as compared to that of all of the offences known to the police forces. Neither victimization survey obtained information from the police records about children or youths who may have been victims. The Edmonton study collected information from persons 18 years and older, while the Hamilton survey of the following year included persons who were 16 years and older.

These victimization surveys found that many persons, when interviewed a year after the occurrence, were reluctant to admit they had been victims and that some recalled the incident inaccurately. The 1978 Hamilton survey followed up 94 sexually assaulted cases known to the police. Of these 94 persons, 51 or 54.3 per cent were contacted a year after the incidents had occurred. These 51 victims were subsequently interviewed, and while 39 or 76.5 per cent acknowledged that the offence had occurred, 23.5 per cent denied having been victims. Among the victims who were willing to speak about the sexual offences, only 38.5 per cent recalled accurately in which month they had been assaulted.

A general finding in studies on sexual offences is that a substantial number of these crimes are committed by persons whom the victims know, either well or as casual acquaintances. For a number of intensely personal reasons, many of the sexual assault victims choose not to report the offenders to the police, preferring not to have these matters become subject to official or external scrutiny. In the surveys for Hamilton and Edmonton, police records were used as the means of identifying persons who were contacted about crimes that had been committed during the previous year. Many of those who were contacted may have feared that these cases might reopen officially when they wished them to remain closed.

The methods used in the surveys for Hamilton and Edmonton may have contributed to the reported reluctance of victims to discuss the incidents. As well, the respondents were interviewed. While interviewing may be an appropriate approach to collect other types of information about victimization, it is less likely to be the case when a stranger inquires about sensitive personal matters such as sexual assaults, particularly when these may have been committed by family members, friends or acquaintances.

The third victimization study in the series undertaken by the federal Department of the Solicitor General was a telephone survey in 1979 of 10,248 persons over the age of 16 who lived in Vancouver.[35] While the questions asked about sexual offences focussed only on rape and attempted rape, all reported instances of sexual assaults were subsequently incorporated. For this reason, it is uncertain what is the actual range of the acts for which findings are given.

The reported occurrence of sexual offences among the residents of Vancouver in 1979 was 0.34 per cent. When this rate is prorated only for females, it rises to 0.50 per cent; this is approximately five in 1000 women who said that they had been raped, that a rape had been attempted, or that they had been otherwise sexually assaulted. A majority of the victims (69.5 per cent) were young, single, adult females who had been assaulted by strangers (63.6 per cent) in public places (78.4 per cent). In about a third (37.1 per cent) of the instances, alcohol was involved. About half (48.4 per cent) said they had been injured, but fewer (41 per cent) sought medical care. As with the findings of other such surveys, few of the respondents reported the incidents to the police.

The results of the Vancouver survey concerning the reporting of sexual offences differ substantially from the findings of most studies of this kind and may reflect more how the survey was conducted than the actual frequency of the occurrence of these incidents. Most of the sexual assault incidents were reported to have been committed by strangers and to have occurred in public places.While this may be a feature of these crimes that is peculiar to Vancouver, the findings of the Committee's research (police force records, child protection and medical services and national population survey) suggest that the survey procedure used was not wholly effective in documenting the full range of these assaults. The sexual offences reported in these telephone interviews were only those which the women were willing to discuss, namely, those in which most of their assailants' identities were unknown to them.

The fo[illegible]h victimization survey undertaken in 1981 by the federal Department of the S[illegible]licitor General obtained information from 817 persons who were 18 years or older living in Quebec, Ontario and Manitoba, 76.4 per cent of whom lived in Montreal, Toronto and Winnipeg.[36] This survey focussed on the attitudes of these persons towards the administration of justice and obtained information about whether they had been the victims of 13 different types of crimes. Confirming the results of other studies, the 1981 survey found that while most of these persons endorsed strongly the work of the police (89.2 per cent), they believed that the courts were too lenient with criminals (72.0 per cent). As in other surveys of this kind, the distinction is usually not made

between the nature of the evidence presented in court and the sentencing decisions that are reached.

The survey asked the respondents three questions about their sexual attitudes, activities and their experience with sexual offences. One of these questions was if "homosexuals should be accepted in our society like everyone else?" Over half of the persons who were interviewed (58.7 per cent) agreed with this statement, 36.5 per cent disagreed and 4.8 per cent gave no reply.

Another question dealt with the knowledge and the participation of these persons in local programs of crime prevention. "Women's associations against rape" was one of the community resources that was included in this question. Although three in five of the respondents (59.2 per cent) said that they were aware of these associations, only a few (0.9 per cent) had contacted them or participated in their programs.

The results of other victimization and community surveys show that there is a selective reporting by victims of crimes to the police. This trend also emerged in the results of the 1981 survey. A third of the persons in the survey (33.8 per cent) said that they had notified the police after they had been threatened or attacked with a weapon and a quarter (24.2 per cent) had done this after they had been physically assaulted or injured. Among the 13 types of crimes that the persons in the survey were asked about, the victims of sexual assaults ranked the second lowest in terms of notifying the police of these incidents.

The wording of the question: "Have you ever been forced to have sexual relations?", did not specify what was meant by force or sexual relations and no information was asked about by whom these assaults had been committed or when they had happened. Of the 3.6 per cent of the persons who said that they had been the victims of "forced sexual relations", half (50.0 per cent) said that these episodes had happened once and that most of the incidents (77.8 per cent) had occurred over three years prior to the survey. Only one in seven (14.7 per cent) of the offences had been reported to the police.

In reviewing cases that were brought to its attention over a period of years, the *Canadian Human Rights Commission* found that a considerable number of complaints involved reports by persons about sexual harassment at their places of work. In order to document the extent of these problems, the Commission undertook a national population survey in 1981 of 2004 persons who were age 18 years and older.[37]

In the Commission's survey, unwanted sexual attention was defined to include: leering or suggestive looks; sexual remarks or teasing; subtle sexual hints and pressures; touching, brushing against, grabbing or pinching; repeated pressure for a personal relationship or sex; and forced sex. Two in five persons (41.2 per cent) said they had experienced one or more of these forms of unwanted sexual attention with the proportion of women who had experienced these acts being higher (48.7 per cent) than that for men (33.2 per cent).

The survey also reported that about one in eight persons said that they had experienced repeated pressure to have a "personal relationship or sex". Two per cent said they had been forced to have sex at some time in their lives; the proportions were: three per cent of the women and one per cent of the men. The persons included in the 1981 national survey were also asked if they had been "harassed" by the persons who had committed these acts. The assessment of what constituted harassment was left to the judgment of the respondents. No distinction was made in the survey about the explicit nature of the threats, what type of forced sexual acts may have been committed and how old the persons were when these incidents had occurred.

When all types of unwanted sexual attention were aggregated together, the 1981 survey found that over two in five of these acts (44 per cent) had been committed by co-employees, about one in five by other persons whom the respondent knew (20 per cent) and most of the remainder had involved strangers. Overall, two in three of the victims of these unwanted sexual acts had known the persons who had accosted or assaulted them. There was no further identification given in the Commission's report about the identity of these persons, e.g., whether they included family members, relatives or acquaintances. Because there was an imprecise specification of the nature of the association between the persons who were involved in these incidents and of the types of sexual acts that had been committed (e.g., pressure for relationship, forced sex), no direct comparison is feasible between the results of this survey and either other victimization surveys or the National Population Survey that was undertaken by the Committee.

The main features of some of the major victimization surveys for Canada document the sharp and persistent discrepancy between crimes actually committed and those reported selectively or discovered by the police and other helping services. These studies also raise a number of "warning flags" about the circumstances under which persons who have been the victims of certain types of crime, such as sexual offences, may feel reluctant to discuss them subsequently with strangers, or without sufficient preparation. The hallmark of these studies has been their preoccupation with crimes committed against adults. Based on this assumption, only the experience of adults was considered to merit research attention.

Community Surveys

The intent of the 1970 mailed questionnaire survey of heads of households living in London, Ontario was "to document public attitudes concerning legal sanctions for a wide variety of criminal activities in Canadian society."[38] Included in the listing of the offences that 451 respondents were asked to rate on a nine-point scale (ranging from no penalties and fines to imprisonment and execution) were: rape, attempted rape, prostitution, the prostitutes' clients and homosexual acts.

The results for rape and attempted rape were similar with the most frequently assigned penalty being imprisonment for between two and five years. In contrast with these serious sexual offences, most of the persons in the survey felt that either there should be no penalties or only fines and probation for: prostitutes (70 per cent); the clients of prostitutes (90 per cent); and persons committing homosexual acts (79 per cent).

On the issue of the legal sanctions that the respondents recommended in relation to prostitution, the 1970 London report noted that "although the penalities for the female in this case are relatively light, the sentences given to the male who uses the prostitute are even more lenient".[39] Homosexuality was defined as "two members of the same sex (who) engage in sexual relationships", an activity that was said to be "no longer defined as a criminal activity in Canada".[40] Perhaps as a result of this misinterpretation of the existing criminal law, no distinction was made in the survey with respect to minors who may have engaged in these acts.

While the 1970 London report recognized that the views of these respondents could not be generalized to the Canadian population, its authors were optimistic that "the data gathered in London may, more than any other single area, have the greatest applicability".[41] In comparing the composition of the sample to the 1961 Census statistics for the city, it was concluded "that there are no statistically significant differences between the London population as a whole and our return sample".[42] While this assumption may have been valid in relation to the sample reflecting the characteristics of the heads of households, this group of respondents represented a narrow cross-section of that city's total population. The 451 persons from whom the results were obtained were predominantly middle-aged (median age, 42 years) males (88.0 per cent) who were married (86.7 per cent), protestant (72.1 per cent) and presumably anglophone (the language of the questionnaire).

Only about one in eight of the respondents was a female, a group that other research reports have shown comprises a majority of the victims of sexual offences, and whose views, had they been more fully represented, might have yielded somewhat different results than those given in this Report.

As part of a program designed to identify local crime problems and the public's assessment of enforcement services (police, the courts, corrections), the *Royal Canadian Mounted Police* (R.C.M.P.) in 1979 surveyed the rural and urban municipalities of Selkirk and The Pas in Manitoba.[43] The surveys included: the documenting of all service calls to the police; an assessment of police files involving investigations; four separate community surveys of residents; and extensive meetings with local leaders.

The number of service calls involving sexual offences in 1979 for the four regions ranged from 0.2 to 1.0 per cent. While these constitute a small number of cases, the rates varied by 400 per cent between the rural communities. A comparable variation was found in the number of sexual offences which were investigated by the police with an 800 per cent difference between 0.1 per cent reported for rural Selkirk and 0.9 per cent for rural The Pas.

About a third of all crimes reported to the police were not witnessed, with the proportions for particular offences varying between 29.0 and 38.6 per cent. These comprehensive community studies confirmed that the police relied heavily upon the participation of the public to bring offences to their attention. Between a third (32.3 per cent) and a half (49.5 per cent) of the police investigations were initiated by complaints made by the public, while those resulting directly from police work ranged from 18.0 to 32.8 per cent. When the residents of the four communities were asked how they rated the effectiveness of enforcement services, most strongly endorsed the work of the police (nine in 10 giving a strong positive rating), only about a half rated the courts positively and well less than half approved the work of the correctional services. These community assessments of crime prevention called for strengthening of police work when juveniles were involved, greater public visibility for the work of the police and more effective ways to involve the public in the reporting of offences.

The residents of the four communities in Manitoba were asked whether they feared that they were likely to become the victims of seven types of crime. One of these fears was that of being sexually assaulted. Among all residents, this was the least feared of the seven crimes. Between 1.7 and 3.7 per cent of the persons who were interviewed said there was a "certain" or a "good" chance they might be sexually assaulted (a difference in perceived risk of 118 per cent). On average, the number of persons stating they feared being sexually assaulted was five times the number of actual cases of sexual assault investigated by the police. There was no direct association between the perception of risk and the number of cases known to the police in the four communities. The community with the lowest proportion of cases (0.1 per cent) reported to the police had the highest number of persons (3.0 per cent) who felt there was a certain or good chance that they might be sexually assaulted. It is unknown whether this greater sense of concern in some of the communities led to greater precautions being taken that in turn accounted for the lower occurrence of reported sexual assaults.

What is unusual about the community surveys for Selkirk and The Pas is that several complementary surveys were undertaken, a procedure which permits the comparison of findings obtained from different sources within these communities. With respect to sexual offences, it was found that the reported prevalence of these crimes varied both between communities and with regard to the perceived risks of being sexually assaulted. What is unknown from these community surveys for London, Selkirk and The Pas is how many persons were actually assaulted sexually, their ages, sexes, and how such experience may have affected their willingness to report these crimes, and their perception of the relative risks of being assaulted.

Quebec Child Protection Surveys

The most extensive surveys for Canada of sexually abused children who are cared for by child protection services have been undertaken by *Le Comité*

de la protection de la jeunesse of Quebec. Between 1975-81, Le Comité completed four major studies that included: surveys of child abuse in 1975-76 and 1978; an analysis of incest in one region; and a report on the sexual experience and knowledge of teenagers.

Based on its research and annual provincial child protection services' statistics, Le Comité found that a sharp increase had occurred in the reporting of cases of child sexual abuse. In 1978, 7.4 per cent of cases that were handled by child protection services involved sexual abuse. This proportion rose to 17.7 per cent in 1979 and to 22.9 per cent in 1980, or a tripling of the reported occurrence during three years. The research reports of Le Comité attributed this sharp increase to a greater willingness by victims and their families to report these offences and the impact of the application of amended child protection legislation which had facilitated the identification of these incidents.

In terms of the cases known to provincial child protection services, Le Comité estimated that in 1977, 0.20 per cent, or two in every 1000 children, were abused. When the number of sexually abused children reported to Le Comité are calculated, the incidence rose from 0.02 per cent to 0.04 per cent between 1978-80. Acknowledging the inadequacy of the sources of information about the actual extent of the offences, Le Comité estimated that the unreported incidents were at least twice the number of known cases.[44-45]

The results of the 1975-76 survey that was undertaken shortly after Le Comité was established are given briefly as its results were documented further by Le Comité's more extensive study completed in 1978. The 1975-76 survey drew upon a sample of 600 child protection records from child protection services across Quebec. A total of 28, or 4.7 per cent, of the cases involved child sexual abuse. Two in three of the children had been assaulted by a member of the family (fathers, 43.5 per cent; a substitute parent, 17.7 per cent; and in-laws, 4.3 per cent). Several of the children were subsequently found to have behavioural problems with 15 per cent being assessed as socially maladjusted, 11 per cent had educational difficulties, seven per cent had signs of mental deficiencies and six per cent had language or speech problems.

About half of the sexually abused children (48 per cent) were removed from their homes under court orders. Following the initial reporting of the cases to child protection services, 61 per cent of the sexually abused children were visited once by social workers and 17 per cent of them twice. After the children were removed from their homes, two in five were not contacted further by child care workers.

In 1977, amendments were proclaimed to the provincial child protection act. The 1978 study by Le Comité, called *Operation 30,000*, was a follow-up to the 1975-76 survey; it served as a basis to assess the operation of the new legislation.[46] Among the approximately 30,000 children served across Quebec by Le Comité, 6299 were reported by case workers to have been abused or neglected. Of this total, 398 children (6.3 per cent) were the victims of sexual offences.

The 1978 child abuse survey by Le Comité assembled cases from all regions of Quebec and the findings obtained indicate that there were extensive regional variations in the reporting of these cases. Confirming the results of the 1975-76 survey, the 1978 study found that 57 per cent of the children were socially maladjusted and 52 per cent were physically handicapped (visual, hearing, organic, mental deficiency, behavioural problems).

In addition to its review of child protection services provided for sexually abused children, the 1978 survey asked social workers about the objectives of these services and how such assistance was most effectively provided. While most of the case workers believed that attaining a stable environment for the child was the ultimate objective to be achieved, there was no consensus how this was to be done. A fifth of the workers advocated that a child should be kept with his or her family. Other options including the temporary or permanent removal of the child were endorsed by half of the social workers (53 per cent). Over half of them (57 per cent) called for improving parental attitudes and behaviour and about a third (30 per cent) focussed on the need to assist the child.

There were sharp disparities between the objectives of child protection services that were held by case workers and how such services were provided for sexually abused children. Between 1975-78, there was a marked shift towards more of the sexually assaulted children being removed from their homes. In the 1975-76 survey, 48 per cent of the children were taken from their homes, a proportion that had risen to 77 per cent by 1978. The average length of placements was about three years (35 months). Less than half (45 per cent) of the families from whom the children had been taken did not receive counselling or assistance from child protection services. Following their temporary placement, 55 per cent of the children were returned to their families without case workers assisting them in making the reunions.

Le Comité's third study of child sexual abuse was an indepth review of the experience of 36 girls who had been the victims of incest.[47] The case records of these children who had been seen by social workers during 1979 in the Outaouais Region were reviewed; five of the girls were interviewed. The report concluded that the amendments to the child protection legislation had facilitated the reporting of cases of incest, as assailants were less threatened with the fear of prosecution than before these changes had been made. These children were not only the victims of the offences, but in some instances, of the system that was intended to help them. Numerous gaps in the types of services provided were noted in the Report. An instance that was given of the need to strengthen these services was that with the exception of one social worker, none of the others had the requisite training or the experience to deal adequately with the victims of incest or their families.

At the request of the local board, Le Comité undertook a comprehensive review in 1981 of the sexual behaviour, knowledge and attitudes of 133 teenagers.[48] The findings of this study are reviewed with other surveys of the sexual behaviour of Canadian school children. In addition to the four research studies

on child abuse, Le Comité continued its concern with these issues by collaborating with the National Child Protection Survey undertaken by the Committee. Le Comité encouraged the development of the national survey, pretested the research protocol that was used subsequently in other provinces, and in 1981-82, completed a sample survey of cases of child sexual abuse that were treated by child protection services across Quebec.

The comprehensive and detailed research by Le Comité de la protection de la jeunesse is a significant contribution in documenting the dimensions of sexual offences against children, who the victims were, how they were harmed, and how services were provided for them. What is unusual about these studies is that they were undertaken in connection with changes in child protection legislation with the purpose of gauging the extent of the problems and how they were dealt with under the terms of the law. The child protection surveys of Quebec provide a basis upon which to gauge emerging trends involving the identification and the management of child sexual abuse. By identifying gaps in how services are given, this research provides an empirical foundation upon which to develop more effective means of providing protection for these children.

Sexual Knowledge and Experience of School Children

In addition to victimization and community surveys, a number of studies completed during the 1970s inquired about the sexual attitudes, knowledge and behaviour of high school children. While the studies for Saskatchewan (1979), Saguenay — Lac St. Jean (1981) and Calgary (1981) did not ask students whether they had been sexually abused, information was obtained about when they began to have intercourse, about their attitudes towards sexual behaviour, and in one instance, about their experience with homosexual acts. An exception to the type of information that was collected in the other surveys was a detailed review of the sexual experience including sexual assaults of a small number of high school students in Quebec (1981).

The 1979 Saskatchewan Youth Health survey of 744 high school youths who were between 15 and 19 years-old found that 44.1 per cent said they had had intercourse at least once.[49] Among these sexually initiated youths, 23.8 per cent had had intercourse before age 14, and by age 15, almost half (48.1 per cent) had done so. No information was obtained about the ages of their partners. The results of the Saskatchewan Youth Survey confirm the findings of the larger 1976 national population survey undertaken by the federally appointed *Committee on the Operation of the Abortion Law*. The survey found that among young males, 30.0 per cent of 15 year-olds and 41.6 per cent of the youths between 16 and 17 years had had intercourse at least once, while among young females, 8.3 per cent of those who were age 15 and 18.6 per cent of those who were 16 and 17 years had had coitus. Concerning this discrepancy

between the sexual experience of young males and females, the *Committee on the Operation of the Abortion Law* noted:

> In the folkways of young males who socially and physiologically are in transition between childhood and manhood, there is much braggadocio about their sexual potency and their alleged sexual liaisons. It is often thought that to be a man is to be sexually intrepid, and to be seen to be so . . . it is not readily apparent from the higher rate of coitus . . . of young males between 15 and 17 years than females, with whom sexual intercourse occurred unless this happened extensively with older women by younger men . . . [50]

Adopting a broader definition of sexually active behaviour than was used by the Saskatchewan study, the 1981 Calgary Survey of Sexual Behaviour and Attitudes reported that 58.0 per cent of 810 high school students were sexually experienced.[51] About one in six youths (16.6 per cent) had had coitus before age 14 years.The proportion was higher among those who had engaged in other forms of sexual activity, among whom one in four (26.5 per cent) had had coitus. Information was not obtained concerning the ages of their partners or about the relationships between them.

In one of the most extensive reviews of school children in Canada, the 1980 *Enquete sur les connaissances sexuelles des etudiant(e)s* in the Saguenay — Lac St. Jean region of Quebec obtained information on the knowledge, beliefs and sexual behaviour of 658 adolescents comprising 7.9 per cent of 8257 college (C.E.G.E.P.) students who were 17 years and older.[52] Among these students, 43.1 per cent said that they had had coitus at least once since age 12, and 10.8 per cent said they had had a homosexual experience. The experience with homosexual partners varied by sex, with 15.2 per cent of adolescent males and 5.8 per cent of adolescent females reporting that they had participated at least once in these acts. Regarding their attitudes towards pedophiles, the students regarded pedophilic persons as: psychotics or very dangerous individuals (48.2 per cent); middle aged men who fondled children but who did not want sex (28.7 per cent); older men with records of past sexual offences (11.6 per cent); homosexuals (9.9 per cent); and alcoholics (1.7 per cent).

The Saguenay — Lac St. Jean survey found that girls were more knowledgeable about sex than boys. Fewer than three in 10 students looked to their parents as the primary source of information about sex. Other frequently cited and multiple sources of information about sexual behaviour were: reading (23 per cent); school courses (22 per cent); friends (18 per cent); and the media (18 per cent). Based on the criteria of a Sexual Knowledge Test, it was concluded that 84 per cent had inadequate knowledge, that 13 per cent had a weak understanding, and that only three per cent were considered to be well informed. That these students possessed an inadequate level of sexual information was illustrated by the fact that 55 per cent of young males and 39 per cent of young females did not know when a woman's most fertile phase of the menstrual cycle occurred.

The 1981 study of the Sexual Behaviour and Opinions of Adolescents undertaken by *Le Comité de la protection de la jeunesse* is unique among the

Canadian studies of school children because of the detailed questions that were asked about their experience with sexual offences.[53] Because of the forthright nature of these questions, the identity of the high school attended by the 133 students who were surveyed was not reported.

Two-thirds (63.2 per cent) of the students said that they had been the victims of some form of violence or physical assaults. One in 13 had been sexually assaulted (7.5 per cent); slightly over half of these victims (4.5 per cent) had been sexually assaulted while the remainder (3.0 per cent) had been the victims of both physical and sexual assaults. Among the 10 sexually assaulted students, seven were girls and three were boys. Family members had committed six of the offences (against four girls and two boys). Among the incidents which had been committed by other persons, two victims had been attacked by gangs (a girl and a boy), one assailant was an adult acquaintance and one offence had involved a boyfriend.

The Quebec high school students said that they had obtained most of their knowledge about sex from books (79 per cent) and their friends (69 per cent). When they were asked who they would prefer to obtain this kind of information from, the sources that the students listed were: parents (23 per cent); books and magazines (20 per cent); friends (19 per cent); and health workers (18 per cent).

These four surveys of teenagers are alike in indicating that, starting at about ages 13 to 15 years, a sizeable proportion of young males and females have had coitus at least once, and that both the numbers involved and the frequency of these sexual acts increase with age. What has not been documented in these reports are the ages, the sex and the nature of the association with their partners, or the extent to which participation in these acts was voluntary or involuntary. With the exception of the report about the experience of a small number of Quebec high school students, the prevailing assumption in these reports was that these teenagers were experimenting with, or learning about, sex with their peers and that none of the acts involved prostitution, incest, rape or a broad disparity in age between partners.

Sexual Assault Surveys

The 1970 Toronto rape study of 116 women who were 14 years or older drew its results from assaults reported to the police.[54] The majority of the offences (64 per cent) were acts of violence committed by strangers; these assaults involved the use of weapons (13.5 per cent), physical attacks (32.0 per cent) and threats (37.1 per cent).

Among the rapes that were investigated by the Toronto police in 1970, 36 of the victims were teenagers between 14 — 19 years. No separate analysis was made for this group. The 1970 Toronto rape study acknowledged that there was incomplete information about the actual occurrence of sexual offences. Its

estimate was that between 2.5 and 25 rapes occurred for every one that was reported to the police. The basis for this conclusion was that:

> In Canada, the most knowledgeable and most frequently heard 'guesstimate' is that for every ten rapes committed, between 1 and 4 are reported. And a Toronto psychiatrist, whose clients include a large number of rape victims and their husbands, believes that only 1 rape in 25 is reported. Thus, estimates of reporting rates go from a high of 40% to a low of 4%. This means that at least 2.5 rapes and as many as 25 rapes occur for every one that is reported. Reported rapes are only the tip of the iceberg.[55]

The results of the 1970 Toronto rape study were cited widely as the basis to justify the reform of the sexual offences in the *Criminal Code*. Assumptions that were implicit in this review of 116 rapes were that these offences were committed primarily against older teenagers and adult women, that the legal reforms advocated would equally benefit children and adults, and that a single source of information was a sufficient basis to document the general dimensions of these incidents.

In the 1978-79 Winnipeg survey of sexually assaulted women, a random sample of 10 women was drawn from each of the City's 105 census tracts.[56-57] A total of 551 women, or 52.5 per cent of those females who were initially approached, gave information on whether they had been sexually assaulted. The definition of rape which was used included oral, anal and vaginal intercourse. A sexual assault was defined to include the following acts: being kissed against one's will; grabbing the sexual parts of a woman's body; unwanted holding or rubbing of bodies; the tearing of clothes; and attempting to commit rape.

Among these women, 6.0 per cent said they had been raped and 27.4 per cent reported having been sexually assaulted, resulting in a total of 33.4 per cent who had been sexually assaulted at least once in their lives. When unwanted kissing was eliminated, 27.2 per cent, or about one in four women said that they had been sexually assaulted. About half of the rapes (46 per cent) and the sexual assaults (53 per cent) had happened before the victims were 17 years-old. Two-thirds (67 per cent) of the assaults were committed by family members, friends or acquaintances. In about a third of the instances (rape, 36 per cent; sexual assault 31 per cent), the assailants had been under the influence of alcohol or drugs. All of the victims reported one or more long-term psychological consequences resulting from these assaults, including dysphoria (depression, anxiety) fear and anger.

Twelve per cent of the women who had been raped and 18 per cent of those who had been sexually assaulted said that they had not told anyone about these offences before disclosing them to the interviewers. About half of the raped women and almost all who had been sexually assaulted (94 per cent) had not sought professional help after these assaults had occurred. Twelve per cent of the raped women and seven per cent of the sexually assaulted ones had reported the offences to the police. The Winnipeg Rape Crisis Centre had been consulted by 3.0 per cent of the raped women and 0.7 per cent of those who had been sexually assaulted. The other multiple sources of help contacted by

these women included: physicians/hospitals (12 per cent); social workers (12 per cent); psychologists/psychiatrists (12 per cent); public health nurses (3 per cent); and none had sought out mental health services, the clergy or had used emergency hotlines.

The research of the 1978-79 Winnipeg Sexual Assault Survey was drawn upon by the federal *Advisory Council on the Status of Women* to project the extent of sexual assaults against women across Canada. In its pamphlet, *Rape and Sexual Assault*, the *Advisory Council* noted that:

> 1 in every 17 Canadian women is raped at some point in her life; 1 in every 5 women is sexually assaulted . . . a woman is raped every 29 minutes in Canada — a woman is sexually assaulted every 6 minutes.[38]

In supporting its conclusions about the national occurrence of these sexual offences, *Fact Sheet #4* of the *Advisory Council* noted that since "the Winnipeg incidence rate is not unusual, the results of the Winnipeg survey had been generalized to Canada as a whole."[39] Based on its review, the *Advisory Council* called for the reform of the sexual offences in the *Criminal Code*, a program of public education and a strengthening of rape crisis centres.

While the findings of the Winnipeg survey, the most detailed of its kind for Canada, are not impugned, the experience of 33 women who had been raped and 117 who had been sexually assaulted in one city provide a limited basis upon which to develop national estimates, particularly since these estimates did not take into account the possibility of regional variations in the occurrence of the offences. Until more broadly based findings are available, in relation to sexual offences committed against children and adults, the Committee believes it inappropriate to draw upon the results of a single study for one metropolitan area as though they represented accurately the national experience.

In addition to its extensive findings, the Winnipeg Sexual Assault Survey indicates that a sizeable number of women, if approached sympathetically, may overcome their reluctance to speak and will provide information about these sensitive issues, and that approaching adults may be a feasible means of obtaining an estimate of the extent to which they were sexually abused as children. The procedural difficulties involved in asking young children to participate in a survey include: obtaining informed, and where appropriate, parental consent; the wording of the questions; and the fact that some of the assaults may have been committed by family members, relatives or persons who are responsible for the children about whom information is being sought. The approach adopted by the Winnipeg Sexual Assault Survey, while it is a second best option to asking children directly about their experience, indicates that it is feasible to obtain detailed information from adults about their childhood experience with sexual offences. The principal limitation of this procedure is the accuracy with which the incidents may be recalled, a factor that is partially offset by gaining information about the long-term consequences that may have resulted from the sexual assaults.

The 1979-80 study of 513 cases reported to five Ontario Rape Crisis Centres rejected the official sources of statistics about sexual assaults as misrepresenting the nature of these crimes.

> Police reports and classification is not an accurate portrayal of sexual assault occurrences . . . The police appear to believe that large numbers of women lie about sexual assault and must be prevented from pursuing their complaints . . . (there has been) . . . an alarming increase in charges of Public Mischief being brought *against the victim* who reports a sexual assault and is not believed . . . "[60]

Based on the experience of five Ontario Rape Crisis Centres, the results of the Winnipeg Sexual Assault Survey and the 1970 study of rapes reported to the Toronto Police, it was estimated that "the combined incidence rate of rape and sexual assault is one in four for women living in Canada. Far from being an infrequent crime, sexual violence is a fairly common experience."[61]

The conclusion that a large number of violent sexual attacks are committed against women came from the study's findings that: two-thirds of the women (63.4 per cent) had been raped or attempts had been made to rape them; a third (33.8 per cent) had been attacked violently; and well over half (58.5 per cent) had been severely injured. One in 10 of the women (10.2 per cent) said they had been the victims of incest or an incestuous assault. Among the women who had been injured, 15 had been beaten severely; 51 had been burnt, choked or hit; 12 had suffered vaginal or anal bruises and lacerations; and 20 reported other kinds of physical harm.

Many of the victims said they had suffered emotional problems that had resulted from the assaults. Of the 165 cases, for which this information was available, the harms included: trauma up to four weeks (53); symptoms up to one year (29); severe long-term trauma (38); difficulty with or loss of a job (13); major changes in lifestyle (40); and thoughts of or attempts to commit suicide (22).

The majority of the persons who came to the centres were young (53.1 per cent under age 20) women (96.4 per cent), most of whom had been attacked by slightly older males. A quarter of the assailants (27.3 per cent) were strangers, over half were acquaintances (54.0 per cent), and one in six (16.8 per cent) was a family member. Of the children who were under 14, 35 per cent had been raped and 16 per cent were incest victims. One in seven assaults (14.1 per cent) had been committed by two or more assailants. Over two-thirds of the incidents (69.6 per cent) had been in the homes of the victims or the suspects, and the remainder had occurred in public places.

The Report stated that "in the experience of counsellors at Rape Crisis Centres, fewer women than formerly are willing to go to the police and lay charges against an assailant."[62] Of the 148 females for whom this information was available, 118 or 79.9 per cent, had notified the police.

The Report on the persons who had consulted Rape Crisis Centres concluded that "the results of the Ontario study provide more detailed information

on the experience of sexual assaults, than do other available studies completed so far in Canada."[63] This objective was not fully realized since few of the completed Canadian studies were cited.

A limitation in the presentation of the Report's findings was the use of flexible denominators. While 513 cases were selected initially for analysis, the method of analysis was to give information for each item for which findings were available. This procedure serves to inflate results by calculating them on a smaller denominator than the initial listing of the cases that had been selected (513 cases). The denominators used to calculate some of the results were: sex distribution (274 persons); the number of assailants (304 persons); multiple assault cases (425 persons); the location of incidents (207 persons); the type of association between victims and assailants (268 persons); physical injuries (200 persons); emotional harms (165 persons); and the notification of the offences to the police (148 persons). In this respect, it is unclear how information was given for 507 persons who had been assaulted, while the sex of only 274 persons was listed.

National Opinion Surveys

Two national opinion surveys have gauged the awareness of Canadians about the physical abuse of children by their parents, about whether they believed sexual assaults constituted a serious problem and about their attitudes towards homosexuals and the availability of pornography. While these national opinion surveys did not obtain information on child sexual abuse, the views of Canadians on related issues indicate that these issues are seen as serious problems and that there is a widespread condemnation of sexual deviance.

In January, 1982, the Canadian Institute of Public Opinion (Gallup Poll) asked 1050 Canadians who were 18 years and older; "Are you personally aware of any serious instances of physical abuse of children by their parents, that is, not just something you read about in newspapers or saw on T.V., but that happened to someone you know or someone who lives in your neighbourhood."[64] One in 10 Canadians (11 per cent) said that they knew a child who had been physically abused by a parent, a rate lower than that in a similar national survey for the United States (15 per cent).

Both national surveys used a definition of physical abuse which did not distinguish between child abuse and the parental disciplining of a child, such as spanking. The focus on physical abuse excluded other forms of harm such as emotional abuse, or the neglect of a child, as well as acts committed by persons other than a child's parents. For these reasons, the reporting of the physical abuse of children by a cross-section of the Canadian population constitutes an underestimate of the full range of abuses committed against children.

The knowledge by Canadians of physically abused children varied regionally and according to their social circumstances. Fewer persons in the Maritimes (4.4 per cent) than elsewhere in Canada knew of incidents of physical

child abuse. The rates for other regions of the country were: Quebec (12.7 per cent), Ontario (11.8 per cent), the Prairies (9.5 per cent) and British Columbia (12.5 per cent). The reports of known instances of child physical abuse were given more often by persons with higher incomes and with higher education (university education, 14.1 per cent; primary school education, 7.4 per cent), and among households with children (13 per cent) than by adults living by themselves (8.9 per cent). While the national survey of knowledge about physical child abuse provided information on a single issue that was narrowly specified, the results indicate that variations along these lines may occur between regions of the country and according to the social situation of persons from whom such information is obtained.

Between 1975-81, two national surveys focussed on the attitudes of Canadians who were 18 years of age and older concerning a number of issues including whether persons felt they were at risk of being sexually assaulted and their attitudes towards homosexuality and the availability of pornography.[65] The results of the surveys suggest that Canadians held deeply entrenched views about these issues and that there was little change in their opinions during this period. Eighty per cent of the adults in the 1980-81 national survey said that sexual assaults were a serious problem. These concerns were greater among women (89 per cent) than men (71 per cent), and for women, more often voiced by those who were younger or much older, and those having broken marriages and less education. While a majority (70 per cent) said that homosexuals were entitled to the same rights as other Canadians, about an equal number of persons in each survey believed that homosexual acts were wrong (72 per cent in 1975; 69 per cent in 1980-81). The disapproval of homosexuality was more strongly held by men than women, by married than single persons, and by the residents of smaller than of larger centres.

Indicating a growing public concern about pornography, more Canadians condemned its distribution in 1980-81 (92 per cent) than in 1975 (86 per cent). The condemnation of pornography was expressed more strongly by older rather than younger persons, by more women than men, and by more of the residents of smaller than larger population centres. These differences, however, were relatively insignificant compared with the widespread condemnation across the country against the distribution of pornography.

In the 1980-81 national survey, 35 per cent of the respondents said its distribution should be banned completely, 57 per cent said the law should prohibit its availability to youths who were 18 years and younger and only eight per cent advocated that there be no curbs restricting its distribution.

These widely held negative views expressed by many Canadians about the distribution of pornography differ sharply with the widespread availability and consumption of these materials across Canada. This paradox between moral imperatives and what Canadians do in relation to buying these materials indicates that there is much latitude in terms of what is considered to be acceptable sexual behaviour and its description or display in publications. This fact may account for the discrepancy between how Canadians believe the distribution of

pornography ought to be limited and the more tolerant application of sanctions by enforcement and legal authorities. What such surveys do not indicate is whether, in the pursuit of a more vigorous prohibition of the distribution of pornography, Canadians are fully agreed about the types of acts which they condemn in general terms and whether they are prepared to forego certain entrenched rights in order to achieve the desired prohibition.

Summary

The salient features of the research on the extent of sexual offences include: the consistent reporting of a substantial number of these crimes that are unknown or undetected by public services; the broad range of helping resources that are turned to for assistance; and an imprecision in the identification of the specific acts that were committed, the persons involved and what their relationships were. In addition to these trends, the Canadian research on sexual offences has focussed on the experience of adults. No central co-ordinating mechanism has been established that assembles and makes available these sources of information.

Despite its diversity, there is no doubt that for Canada and elsewhere the number of officially reported sexual offences does not accurately reflect the true occurrence of these crimes. There is a firm and broad consensus on this point. There is no agreement, however, on the size of the ratio between the number of undetected incidents and the number that are officially recorded by the public services.

The research on sexual offences reaffirms the truism of clinical interviewing and social survey research that the way in which information is collected influences the extent to which persons are willing or reluctant to speak subsequently about certain events as well as the types of incidents they are prepared to report. Brief and impersonal contacts in which general questions are answered with uncertainty that the confidentiality about one's responses will be maintained yield fewer replies when matters of sensitive personal concern are broached. In the instance of sexual offences, this procedure would undercover incidents involving strangers. Where more effort has been made to identify the purpose of an inquiry, where more specific questions are asked and where a sense of rapport is established, fuller and more detailed information is given. This approach relies upon the objective neutrality of the interviews. One procedure which has been seldom tried is to ask persons to read questions and to provide written answers while assuring that confidentiality of their replies will be honoured. Most of the differences in the ratios between unreported and reported sexual offences are accounted for by the various methods used in the research studies, some of which are inappropriate to obtain reasonably reliable information about sexual offences.

Much of the research on sexual offences has been completed in recent years, and for this reason, only a modest start has been made in the collation and the cross-referencing of different studies. In the absence of firm informa-

tion gauging the extent to which these crimes occur, a common practice in Canada has been to project the experience documented abroad as though it was indicative of the Canadian experience.

When the victims of sexual offences report these incidents, they turn to a variety of sources for assistance. As a result, the types of information available to each of these sources represents neither the full range of the incidents, nor the full sequence of events that may happen to each victim. While some observers have discounted the value of information that is obtained from such sources for these reasons, this consistent research finding indicates that, in considering the complex issues involved in the occurrence and management of sexual offences, there is a need to draw upon complementary sources.

Typical of this research and of the official criminal statistics for Canada has been the collection of information about offences committed against adults. With few exceptions, most of these sources have not dealt with sexual offences committed against children. Up to the present time, for reasons unknown, the experience of children has consistently been ignored, forgotten or deemed to be unimportant in the documentation not only of sexual offences but also of other types of assaults.

This grave omission is reinforced by the procedures used in the collection and classification of information about victims, suspects or offenders, and the crimes that were committed. In both types of sources — surveys and criminal statistics — only broad categories of sexual offences are typically reported. This practice precludes the specific identification of those sex crimes set out in the *Criminal Code* that specify the elements of these offences in relation to the age, sex and relationships of affinity, positions of authority or trust. Because these rudimentary types of information are consistently missing in the research surveys and official criminal statistics, these sources can be used only as a baseline for documenting broad trends. For these reasons, they cannot be used as basis to review the operation of existing sexual offences in the *Criminal Code* or the potential impact of new legislative proposals.

A characteristic common to most of the Canadian research on sexual offences is that it has been largely the work of single disciplines. This separation has led to distinctive and unrelated bodies of research for police work, community associations, child protection services, school programs, medical services, the field of corrections and social science surveys, among others. Typically, the research that has been undertaken within the purview in one field deals inadequately with the issues that concern the members of other disciplines or services.

In a number of respects, the Canadian research on sexual offences is seriously flawed. While it purports to deal with criminal behaviour, it is seldom informed accurately about the relevant legal issues, even as these pertain to such basic information as the ages and the sexes of the victims, or the types of association between victims and offenders. It is no surprise, then, that these types of studies have often been ignored when legislation is being reviewed or

amended. On the other side of the coin, there has been much reluctance by legal scholars and researchers to seek an empirical basis in relation to the operation of the sexual offences set out in the *Criminal Code*, or concerning the efficacy of different sanctions and sentencing practices. Amendments to this legislation have been made on grounds other than a sufficient documentation of the types of sexual acts that are committed or what happens to the victims and offenders. This approach to the drafting of new legislation is inappropriate when the means are available to obtain more complete documentation.

In his 1968 review of homosexual, exhibitionistic and pedophilic acts, A.K. Gigeroff advocated that empirical research should be the foundation for the review and reform of the law. The Committee concurs with this perspective.

> The information exists in the courtrooms and the police services across the country; there is a methodology for analysing and structuring the data in meaningful ways; the technology necessary is widely used in government and industry. What is missing? There is an unfamiliarity with and skepticism over the possible application of scientific methods to what have been regarded traditionally as legal problems. It follows that there is also a failure to appreciate the relevance of empirical studies and to utilize these in the formulation of criminal legislation. There is perhaps an understandable hesitancy over considering a balance sheet on the operation and effectiveness of previous legislative efforts in criminal law, where there is no precedence for ever having done so in the past.
>
> . . . no simple or single approach to these offences could possibly yield the kind of information one would wish or need to have in order to reformulate them. Each phase of the study presents a different facet of the problem . . . (this approach) . . . provides us with a means of looking behind the legislation, beyond the case law, and it confronts us with a new dimension of the problem of sexual deviations and the law. It presents us with a picture of the legislation *in operation* . . . it enables us to conceive of the problem not on the basis of the act alone but on the basis of the 'event'.[60]

There is an absence of sufficiently extensive and specific information about crimes including sexual offences committed against children in Canada. Strong public effort is warranted to rectify this situation. The value of assembling such information lies in identifying the children known to the helping services, in indicating those who may be highly vulnerable and in making possible an ongoing review of existing policies and programs.

By focussing on sexual offences against children, the Committee has been able to obtain extensive and detailed information on the relevant legal issues as well as on the wider issues that concern the helping services. The Committee believes that because of its usefulness in putting a wide variety of behaviours under examination, this focus should be retained in the federal government's response to the Committee's findings and recommendations. However, care should be taken to ensure that the Committee's wide coverage of behaviours and protective mechanisms is reflected in the government's reponse by the involvement of all interested federal and provincial departments and non-governmental agencies.

In light of its review of the reports of earlier advisory bodies, completed research studies, and the extensive findings documented in this Report, the Committee believes that these purposes as specified in more detail in Recommendation 1 (Chapter 3), would be most effectively realized by the establishment of an Office of the Commissioner having assigned authority to serve as the means to initiate and co-ordinate the reforms which are called for. On the basis of our findings, there can be no doubt about the need to afford better protection for sexually abused children and youths or about the need to seek more effective means of reducing and preventing these offences.

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Chapter 5

Personal Accounts

The complex issues involved in sexual crimes committed against children cannot be dealt with by any single source. The Committee therefore obtained information on several thousand known incidents from child protection workers, police, doctors and others in the helping professions. Briefs were received from a number of groups and associations representing the interests of sexually abused children and their parents. In the National Population Survey the Committee asked a representative sample of some 2000 Canadians about their experiences with child sexual abuse.

In order to reach directly children and youths who had been sexually abused and to obtain information on the experience of adults who had been assaulted as children, the Committee placed requests for information in a number of wide circulation daily newspapers across Canada. Comparable requests were carried on a number of regional radio programs and were made to groups representing children and parents which contacted the Committee. In response to these requests, the Committee received a number of written replies and oral presentations. As expected, in light of what is known about the degree of recognition by children of such offences, their deeply held fears and concerns, and their reluctance to talk about such incidents to others, most of the replies came from older teenagers and adults.

Because of the stigma associated with these assaults, even long after the incidents had occurred, most of the persons who contacted the Committee sought an assurance that their anonymity would be respected. This assurance was given. The excerpts taken from their accounts have been altered only to the extent that references are deleted which might identify persons, institutions or the places where the assaults occurred. To assure the validity of the replies, only those accounts that were signed and in which there was confirmation of address are reported.

These accounts reveal that the family circumstances of the persons abused, the types of acts committed and the identity of their assailants influenced the decisions to seek or not to seek assistance, and when this step was taken, which sources were contacted. Most of these persons were reluctant to give evidence against their assailants. In a few of the instances which were

investigated by the police, the fact of their young age was reported to have precluded charges being laid. The accounts show how the decisions concerning the giving of evidence were made. They also document vividly the effects such sexual contacts had on their lives long after the incidents had occurred.

To assist the members of the helping professions to identify and provide assistance to the young victims of sexual assaults, a number of widely distributed check-lists have been developed which detail the signs of these conditions and the typical responses that may occur following an assault. Some of these reactions have been reported to include: irritability; excessive dependency; loss of self-esteem; general depression, regressive behaviour; withdrawal, truancy; academic difficulties; physical trauma; and suicidal behaviour. Following a sexual assault, the young victims are said to pass through three phases which include: an acute reaction; a recoil phase; and a longer period of reintegration.

During the acute phase which occurs immediately following a sexual assault, the reactions of victims are reported to involve disturbances in eating habits and nausea, insomnia and nightmares, tension, headaches, and if a serious assault has occurred, general body pains. The victim's emotional reactions are reported to include: shock and disbelief; fear; guilt; a sense of helplessness; and anger. Many victims are said to develop an absolute distrust of other persons.

During the second or recoil phase, the young victims of sexual assault are portrayed as resuming their usual activities, often in a hyperactive manner. At this time they may appear outwardly to be adjusting well and are likely to deny what happened to them, to withdraw from discussion of their experience and to resent offers of assistance. The third phase involves a process of reintegration and a gradual return to normal activities.

The accounts reported in this chapter which were written by persons who had been sexually assaulted as children indicate a broad range of reactions, most of which do not conform well to the items on the check-lists of the signs and reactions which they are said to experience. For the most part these classificatory profiles have been developed on the basis of the experience of children who have been seriously hurt, who have been assessed, and whose reactions are projected to be similar to those of adult women who have been assaulted in incidents involving threats or force. It is apparent from these personal accounts that the check-lists have not been grounded on the experience of both females and males who are victims. They neither encompass the full range of the types of incidents which may occur nor do they take in account the attendant circumstances in which children may be involved.

The personal accounts show that few of these individuals received any form of guidance or instruction about sex from their parents, schools or other sources. Several individuals strongly advocated that they would have been in a better position to know what they should have done had they known more

about what was being done to them, that it was wrong, and to whom they might have been able to have turned for help.

Since a central concern of the Committee is the earlier detection and the prevention of sexual offences against children, these accounts are grouped into categories reflecting when and from whom assistance was sought. This grouping of the personal accounts is given in terms of: no assistance sought; assistance sought later in life; and assistance sought immediately.

No Assistance Sought

Personal Account 1

I was an only child of a marriage which broke up when I was four. Over the years, and after the death of my father when I was seven, my mother had several live-in boyfriends (three in all to the best of my recollection). One of these was several years junior to my mother who lived with her for a period of at least six years. At the onset, this was under the pretense of being a boarder, and then gradually, he was presented as being mother's boyfriend and then her husband.

Within a short time of his moving in, this man began what could be called a courting type of relationship with me (then age 11 or 12), taking me out to movies or skidooing. At first, the attention seemed heaven sent. Within a short time, favours were asked in return, starting with petting, undressing, looking, and then, oral sex. I hated being part of this. I made every effort to avoid being alone with him. I recruited some of my friends to rescue me, without explaining why, simply telling them I didn't like him, he was a jerk.

Luckily for me, because of the rate at which the demands were progressing, with actual sexual intercourse being next on the list, the relationship between my mother and this man broke up. I was saved.

I have never shared any of this with my mother. To this day, she and everyone else is — and has been — unaware of my experience, with the exception of my husband, whose support, love and reassurance at the beginning of our relationship, and throughout, has helped me get over those harsh days of my childhood.

Although my childhood experience with sexual abuse was far from being as terrible as many I have heard about since being an adult, I can say, in honesty, that all of this affected my life directly and indirectly. I grew to resent my mother for not protecting me, thus losing the only connection with any living relative.

I felt guilt. Being unable to relieve myself of it with or through anyone, I carried this burden with me. In many ways, I am still insecure and unsure of myself because of these experiences, although time and my husband's love and support certainly have helped to increase my self-confidence.

I am not an expert, but I am relating my thoughts and feelings in the hope that something can be done to help prevent and protect children from having this type of thing happen to them.

1. As a child I felt I was the only one subjected to this type of harassment. Had I been aware that others were too, I might have felt able to share this burden with someone, particularly a helping

adult such as a teacher or a school counsellor. I have seen an ad from the States telling kids that if someone is touching them, to tell an adult, any adult, until someone believes them and stops the attacks. To me, this is one of the best ways to reach kids — to tell them how to get help, and also, to let them know it happens to others.

2. Children should be interviewed by the school counsellor, not at their request, but as a matter of routine, with inquiries being made about their home situation. Too often, kids at the age of 10, 11 and 12 simply do not have the courage or the moxy to seek out a counsellor for help, or even to be aware that help can be obtained through them.

3. As sexual abuse breeds a complete lack of self-worth, and may encourage prostitution, perhaps it would be advantageous to seek out, within the system, be it social service agencies, schools, and other agencies, youngsters who appear to be severely lacking in self-esteem as a clue to their home situtation, and thereby, arrest the process before it is too late.

Personal Account 2

I was sexually abused as a nine year-old boy in a fashion that is classic. It took me more than 20 years before I could admit this to anyone. To this day, my parents are unaware that I was victimized. My wife became privy to the information seven years after we began to live together. Only two or three people within my immediate circle of friends are aware of my experience.

The incident took place at the summer residence of my Grade One teacher who used to select four or five of her former inner city immigrant pupils and invite them to spend the summer at her large estate in ____. My parents, who had been in Canada for approximately five years, considered this an honour and let my younger brother and me out of our overprotective cocoon, entrusting us to her care, feeling that this was an important advance in our lives. After all, her permanent address was in an elite suburb. Two other children were also invited.

I came down with tonsilitis, during the summer, an illness which plagued me until adolescence. I was bedridden for several days. For some reason my former teacher and the other children were absent for several hours on a particular day. Perhaps it was Sunday and they went to church. At any rate I was left alone in this large mansion with a male house guest. I cannot recall how he came to be there or the duration of his stay. Maybe he was just there for the weekend. Shortly after we were left alone, he came into the room where I was convalescing. He got into bed with me. He began to fondle my genitals. I recall just lying there, possessed by total fear. His biggest concern was whether he was hurting me or not. He inquired repeatedly about this.

I cannot recall this person beyond the fact that he was much older because of his gray hair and stooping posture. He left shortly thereafter. I never saw him again, although his presence has remained with me ever since.

As I grew up my biggest problem with what had happened was coming to terms with its homosexual aspects. My peer group was severely negative towards any homosexual, and so I was truly ashamed of what had happened. When I began to attend university, the milieu I frequented continued to be

totally inimical to any form of homosexuality. So my experience was suppressed again, to the extent of being quasi non-existent in my mind. Essentially, I feared that because I was a latent homosexual, I had somehow invited or caused the assault by that strange house guest.

When I became a teacher, the last thing I wanted to admit in any professional discussion concerning child molesting was my own experience. As a personal anxiety the problem gave rise to active prejudice on my part, because it focussed solely on the homosexual nature of the encounter. In other words, had the adult involved been a female, I probably would have boasted about the experience. In fact, that same summer, I had repeated sexual explorations with a young female, one of the other children who had been invited. Also, each morning we were obliged to witness our former teacher's ablutions which were always conducted in total nudity over the kitchen sink. Both of these experiences concerning females were never hidden from my "gang". In fact, as a young boy, they were a constant source of discussion and "authoritative" information in my peer group.

In retrospect, this was solely due to the strong dichotomy that my friends and acquaintances made in evaluating heterosexual and homosexual experiences. As an adult I feel this is wrong. Our concern for ethical sexual behaviour must be able to come to terms with all aspects of sexuality, and not to discriminate in favour of a specific preference when it comes to taking advantage of children.

Personal Account 3

I am going to relate briefly my story, never having done so before. I'm not sure what has prompted me to write you about something that has been a source of shame and despair all my life.

As a boy of six I was sexually assaulted over a period of months by a male member of the family in whose keeping I'd been placed by my father. I didn't know it was wrong. No one had taken the time or trouble to inform me. Whenever I protested, the threats of a beating kept me docile. One particularly severe beating just before the initial encounter left me dreading others.

Shortly after, I was placed in a relative's care. She derived pleasure by hugging me and then beating the hell out of me in a corner of the basement. Everything from an ironing cord to the coal scuttle was used. Yes, my father noticed the marks and bruises, but ignored them as he had no where else to leave me.

Later, I was made a ward of the Crown and sent to a long string of foster homes. With several exceptions I was subjected to perversions, beatings and child slave labour. One occasion was the Christmas morning I spent standing at the top of the landing with my urine soaked underwear tied around my face. I had been beaten in the kidneys and for some time could not control my bladder. The good people looking after me thought this punishment would "teach me a lesson". So I stood there listening to the carols, hearing the couple's natural children exclaiming over their presents, and hating the world. Another memory concerns the good farmer who worked me 12 hours a day in the spring and summer, thinking nothing of keeping me from school at the age of 13 hauling cow manure from the pasture to the farm by wheelbarrow. The distance was roughly a quarter of a mile and my hands were blistered for months before proper callouses formed.

By age 14, I'd developed a bad stutter and an inability to talk to authority figures. When I was 14, I ran away from "home" hitch-hiking to ____ in

early winter. I had no money, so I stayed and ate at hotels without paying. I was caught and charged, appeared before a judge who: (i) transferred me to adult court; (ii) sentenced me to 18 months; and (iii) made me feel like a piece of shit. That started a pattern. I've tried to break it, but something has always turned up from my past to haunt me and make me run. I'm so ashamed of what was done to me that the words just won't come, and when they do, I still stammer very badly.

I implore you, please recommend that "would be" foster parents be cleared by a psychologist before they are allowed to look after children. At one point I was so in despair that I tried to kill myself. I was 12 years-old.

Personal Account 4

At the time the ad appeared, I had reached the point of desperation. I felt that no one was capable or willing of sharing the horror of my childhood rape.

I was molested when I was 13 years-old by my next door neighbour. I was not released from his iron grip for at least two years.

Now that I am 22, I find it hard to believe that one person can torture another in such a humiliating and painful way. He felt that if anyone will get hurt, it will not be him. However, I am hurting in one of the worst ways possible.

Personal Account 5

I don't know how I could have been so naive not to have done something more about what I came to realize was wrong. When I was a boy of about 16, I was homosexually harassed for about half a year.

This man was supposedly an honourably discharged war veteran. I later found out why, but it was only honourable on paper. He was about 28 or 30, went to church regularly and was a pre-med student. He was so ingratiating there was nothing he wouldn't do around the house.

I grew up as the youngest in a family of several children. Emotionally, we were a close and an affectionate family but there was something in our Presbyterian background which precluded physical affection. We didn't hug, touch or kiss each other.

After a while this boarder tried to touch me regularly, to put his arm around my waist, or even to kiss me when he came back from visiting his family. I was disgusted, but assumed he was just different than we were.

Sometimes as a special treat my Mother would make coffee in the mornings on the weekends and we would enjoy drinking this in bed, all in separate rooms. To be sociable, this man said it would be nice to do this together. He got into my bed, starting rubbing my hips and buttocks, tried to kiss me and to put his penis in. My pajamas saved that. I punched him hard enough so that his mouth bled. I got up immediately.

I was too ashamed to tell my Mother. Somehow, I felt guilty as though I had done something wrong. And I knew she needed the extra money.

I told my Mother I disliked him. Could we get another boarder? She said I should be a better Christian like him because he was so good and generous. He tried to do it again at every opportunity, but I never let him get that close. I felt like a stalked animal in a cage.

When I couldn't take it any more, I told my Mother. She was such a devout and good person, she couldn't believe it. She didn't understand. She didn't say I was a liar. Not only did we not know the word "homosexual" - even the idea was unbelievable.

I'd like to think teenagers today are better informed. At age 16, no one had told me about sex. Not believed by my Mother, I didn't know who to turn to. It was too personal a problem to tell a teacher, the minister where we went to church, or even a kindly paediatrician who was our family doctor. It didn't occur to me to go to the police. I wasn't afraid of them. I'd never had any contact with them. I regret now I didn't go to the police so that at least other children who this man abused later could have been saved from what he tried to do to me.

When my older brother and his fiancee were visiting, it just burst out. They made the boarder leave and told his family who lived in another city. I heard later he had been seen by a psychiatrist, but that didn't do much good. He became a teacher and was active in youth church groups so he could find, I guess, more young innocents like me. A long time after I heard from someone who had been in the army with him that that had been the reason for his discharge.

The only time I ever think about it now is when I unexpectedly see an effeminate male, an obviously dressed up "gay", or am touched beyond a handshake by another man. I feel cold and withdrawn. I have been scarred with an intense hatred of any type of sexual deviance or perversion. I am angry that sex which should be giving and affectionate can become twisted and perverted.

I don't know if I would have turned to outside help. I think I might have. What I needed was a formal and complete course in sex education with no holds barred about human sexuality and its deviations. I might then have known what to do.

There is too much hypocrisy about sex education in Canada. Those who oppose it say it will demean children and put ideas of promiscuity in their heads. I reject this. It would give children a shield of protection against sexual deviants, let them know what is acceptable, and what to do when it is not. I hope your Committee has the guts to do something strong and positive so that all children can have that choice.

Personal Account 6

I was raped by a man when I was a boy of about eight years-old. This man was a friend of the family who was invited to stay at our home while he was employed in my father's business. He was married, had children, and drank alcohol, sometimes excessively. I would guess that he was in his early forties.

Prior to the rape we had developed a sexual friendship, often hugging and fondling each other's genitals in bed. We shared a double bed. I had the greater say in what took place between us, and after initial fears, looked forward to sleeping with him. There was something natural about the relationship. The child is not always, nor totally, the innocent victim of a pervert.

Love to a child of eight is total, immutable and always pleasant. The night I was raped he was very drunk. I will never know why because a child of eight cannot comprehend what could drive someone to drink, or to rape.

The man was a friend, not a stranger. Recently, I was dismayed to view on American television that school children were being taught to distrust all strangers, to refuse to listen or to talk to them, and to run away, scream for help or kick anyone who tried to touch them. The harm caused by such fear-mongering is ultimately worse than the sexual offence it purports to prevent.

It would be wrong to assume that the man was a homosexual. He was married, with children, and seemed to enjoy the company of women. He liked to look at pictures of nude women. When a man sexually abuses a boy, or a woman or a girl, I think sexual preference is seldom a major factor whereas other emotional forces, such as repressed anger or the need to express power, are. I question whether pedophilia is as serious a crime or mental illness as it is made out to be. I do not condone the practice.

I recommend that children be protected from sexual involvement with adults. The age of consent should be lowered to reflect earlier maturation. Sex education should be promoted so that the children of today and the adults of tomorrow can act from enlightenment, not ignorance.

Assistance Sought Later in Life

Personal Account 7

My father committed incest on me when I was a child. It started when I was about eight or nine until my late teenage years. It was devastating. My childhood was ruined. I always felt people could see and tell what has happening.

I married at 19 and was fine for a couple of years. Then, it all came to the surface. I told my husband and went into therapy for a few years which helped some. I was told to write a letter to my father telling him what I thought of him. I put all that I felt in that letter, but not the incest. I knew my mother would read it, which she did, and I ended up being called a liar and not allowed to go home. I turned to alcohol. I was on nerve pills for years. As a result, I got addicted to both.

I could not forget "the secret". Dad said it was our secret. It ruined my childhood. To this day, every day, I think about it. It is something that can never recede to the back of my mind. I stopped drinking four years ago. With the help of A.A. (Alcoholics Anonymous) and reading all the books I can on incest, it is getting better. Ever since I can remember, I thought of suicide. It is a viable alternative. But my two sons are what kept me alive and a husband who went through hell with me and stuck by me.

God willing, the future will get better. I dreamt for years of killing my father even when he was on top of me. I hated him for breaking the trust between father and daughter. I've always felt old. I want to ask him one question before he dies. "Why?"

This is very hard for me to write. If I can help one child, it will be worth every bit of effort. The person who commits incest should be taken out of the home, not the child. There should be incest treatment centres for the family to go for counselling. If there is violence, the father should be put in jail and have psychiatric tests or he will never stop. If there are other daughters, he will go to them. The mothers either don't care or are very submissive. My mother was quiet and sick. I think she knew, but doesn't want to believe it happened.

Personal Account 8

My husband molested our daughter over a period of years of which I had no knowledge of at the time. I only found out about it when I told my daughter, by then, about 17 years-old that I was leaving her father for good as I could no longer tolerate the emotional abuse he inflicted on me. I was horrified and sickened when she told me about her experiences.

I sought advice from a lawyer for a divorce and for counselling regarding what happened to my daughter. No one took it seriously. Even a doctor we were seeing at the time thought it was funny. He said it was nothing — that some men are more animal-like than others.

I don't care to go on — the whole thing upsets me. I did get my divorce. I won on grounds of mental cruelty.

Can't something be done to these men? If not a jail sentence, then why not compulsory counselling with a psychiatrist? Could not a doctor have the power to turn the information over so that some investigation could be made. I am happy to see on television a program where people go out to the schools and teach children they have rights concerning their own bodies. I would like to see something like this established in our school system.

I don't know if I've made any sense in what I've said. I only know I had to say it. My own sons have no knowledge of what their father has done. It is just a dark, quiet secret my daughter and I share. I never talk to anyone about this. I write in the hope that something can be done, that with your Committee, more people will become aware, and that education will bring about change.

Personal Account 9

Even though I am no longer a child or a youth (I am 40), I would like to report sexual abuse as a child. The first rape occurred when I think I was approximately 18 months-old. I was too little to speak and tell my mother. A second rape occurred when I was between two and three. From three to age seven, I was raped routinely, especially in the summer when I could not be kept in the house. The rapist was my father.

Until age 36, I had no recollection of my childhood. Growing up on a farm, I had assumed until then it had been a happy one. I knew my father as a good man, religious and a leader in our small community.

When he died, freeing within me the terror and the rage against him, I started experiencing serious problems towards men. If any man showed any interest, I would "freeze up", be paralyzed inside, and unable to move or speak.

I am from a family of 12 children, or 14 I should say (two having died in their first two years of life). I am quite sure that at least six of my eight sisters went through what I did in their childhood. There are enough signs to prove it, although some have no recollection of it. Two others have, but they will not speak of it. It is also possible that one of my brothers had also been abused. And from comments from my mother and an older sister, at least one of his sisters had been abused by my father. This is based on a conversation between the two while my father was on his death bed asking forgiveness for what he had done to her. This sister is now a nun. My father was known as a "good" Catholic.

After five years of primal therapy (re-experiencing one's childhood), I am just beginning to recover my soul which had gone into hiding to survive the trauma. At age six, I had suffered a stroke (I wanted to die), but I survived. I had to relearn how to speak and to walk. I forgot everything prior to that period. From age six to 36, I functioned as an average neurotic having no idea of what my past had been. During the last four years, I have been able to reattach the child in me to the functioning adult.

Personal Account 10

I was raised to be a "nice" (passive, quiet, obliging, helpful, pretty) daughter. I trusted others and was obedient in letting others do as they wished. I hated myself as a result, without really knowing why. It's a terrible position for a child to be in, especially with sexually inhibited parents. Sex, then, simply wasn't "discussed" - it wasn't for me. A subject of punishingly cold anger at home.

I was subjected to rape and sexual violation from the age of three to about 12 by:

- an in-law of one of my parents who was a pharmacist when I was 3, 11, 12;
- an elderly (and nearly blind, white-caned) neighbour when I was 8; and
- another neighbour's teenage son when I was between 10 and 12.

As soon as I knew about menstruation, conception and male and female sexuality, I was able at the age of 12 to stop all of this abuse myself by:

- refusing to visit the neighbour's (teen of 17) son's home again;
- asserting and saying "No" and meaning it and knowing why, finally; and
- telling a parent of the in-law's abusive ways.

I finally had the words and the concepts to tell what was occurring. It's great they have dolls now so that young children can get their plight across to caring, informed and believing adults. When sex is not discussed in the home, a child has no way of knowing that people can understand the feeling that "it's only happening to me" and all the fear and guilt that being in that position entails.

When is it O.K. to touch or not to touch? What about play, tickling, hugging, kissing . . . ? Everything normal and healthy becomes contaminated. People you once trusted, you come to doubt. "Don't kiss me, don't hug me, leave me alone". Yet I craved all of these forms of loving which were offered to me. This feeling cuts off love and stops emotional growth. Everything normal becomes distorted and tainted.

Based on my own experience I believe:

- Children should be informed about sex and sexuality from the earliest age so that they can tell a parent or a guardian of any "unusual contacts".
- Parents must be as aware and cautious as they can be, especially when entrusting their children to the care of relatives or friends. It can happen with anyone, as I discovered, and in the "best" of families.
- Parents, schools and even family physicians should discuss this openly. They warn children not to take candy or car rides from strangers. They should be able to tell them about body-abusers/touchers, and in a positive manner, so that children will not feel "bad" about it and will feel free to talk about it immediately without negative after-effects.

- I believe loving treatment is needed for victims. Returning the victims to society without treatment may "sentence" them instead later to a mental institution, a life of reclusiveness, or a permanent feeling of "not-OKness". They must feel "OK" about themselves and understand what happened so that they can go on with their lives in a healthy, self-loving manner.

Writing this has been good for me — healing. I felt I could turn something negative into something positive to help others. When I began to write I felt very negative. It has taken me a decade to get to where I am now and an enormous amount of energy from "loving caregivers" when I have been in therapy.

Personal Account II

I was sexually abused by my father. As far back as I can remember (to about age 11), I had to touch my father on the penis. It was a nightmare come true. My mom and aunt went to bingo, while my cousins, sister and brother played outside. My father made me stay in and watch T.V., lying down with him. I fell asleep. He undressed me and started touching my vagina. I woke up when he had his fingers inside me. It hurt. It stopped after this one time. Then around the age of 12, he started again; this time it seemed worse. He would always come into my room, wake me and tell me to go downstairs to keep him company. I didn't know who to turn to. I didn't think my mom or anyone else would believe me. I was afraid.

The first time he had intercourse with me was when I was taking care of my little brother, and everyone was out. He said "this won't hurt". He lied. The pain was undescribable. This happened about three times in two years. It didn't happen as often as he wanted because I said "no", and then, he made me give him a blow job. I was always too scared to tell anyone.

The last time he had intercourse with me was the day I came back from summer camp. No one was home when we got there so he said he had built something in their (mom and dad's) room. "Come and see", he said. I went there. "You have to lie down on the bed to see it", he said. I lay down on the bed and he laid down beside me and gave me a kiss on the forehead. I didn't think anything of it. He said, "you must be hot with all your clothes on". I said, "no". He didn't take that for an answer. He started undressing me. I started to cry. He didn't care; he never cared. I guess I went into a state of shock or into a daydream. He was forceful during the intercourse. I started bleeding afterwards. He made me so mad at him, I started crying when I saw my mom.

About two months after this incident, I was talking to a friend in one of my Grade 9 classes. I told her I was getting beaten up at home. She told me to phone the operator and ask for Zenith 1234. I had told this person (a stranger) that I was getting beaten up, and then, I was being sexually abused. They wanted to pick me up that night, but I was babysitting.

After I finished babysitting I phoned my sister to come and pick me up. We walked home and I told her what I had done. She said she went through the same thing. The next day a worker phoned and we met her at a park. My sister talked to her for an hour; they argued. We went to the police station and we had to give testimony to a male policeman, which made it more difficult. I was giving my testimony for an hour or two. My sister was in there for over four or five hours.

I was put in a receiving home with my little brother. He hadn't been abused. He stayed with me for about two or three weeks. I was in there for

almost two months. I chose to live with a very strict and religious person. She had her own son and four foster children — two little girls, a 13 year-old and me. I lasted there for five months.

I got kicked out because I came home drunk as a skunk at 2:00 in the morning. I had a child-care worker who brought me home. My foster-mother and the child-care worker argued for an hour or so while my sister took care of me. The next morning she told me I had to go somewhere else to live. I didn't mind at all. My child-care worker was phoned and was asked if she could take me in. I have lived with her for almost three years.

Personal Account 12

When I was about four, I remember being at a picnic. I was cuddling in my father's arms on a blanket and he started rubbing me between my legs. After that, we used to fondle each other often.

I didn't realize it was wrong until I was about nine or 10. I felt alone. I had a teacher who was special, but I couldn't tell her. Once my mother found us French-kissing. She told us to stop and not to do it again. She knew what was happening, but she never let on.

I used to try to get away when he was home. It went on when we were in the car and on weekends. We only had sex once. That was terrible. When I was 14, I told our doctor and swore him to secrecy. He was disgusted. When I got home, I found the doctor had called my mother. My mother confronted my father and me. He denied it all. I broke down. My mother believed me. We never told my brothers then. They continued to live together, but they did not share the same bedroom.

Until I left home at 18, it still happened sometimes. I didn't want to break up the family. My mother was very moral about sex and had been physically abused as a child. She heard men's stories about sex when she worked at a plant. For her, sex was just to have children. I didn't know their marriage was weak. I thought I was helping to keep it together by giving my father something my mother couldn't. Two years after I left home, they separated. I still write to my father and sometimes see him at Christmas. He doesn't understand he did anything wrong. He was an electrician and has an IQ of about 80. I'm a teacher, so I know that now. I hate him. He's a weak, rejected man. But putting him in jail wouldn't do any good. He needed treatment.

I can't get close to my mother. I feel sorry for her. She knew, but she never understood. It was another world for her. She's lonely and a broken woman. Her safe world came apart. She doesn't like me or how I live. My brothers are taking care of her as she gets older. They know now and reject my father.

After I left home, I was sexually promiscuous. I had sex with a lot of men. I still enjoy it often. But I can't get close as a friend to men or women or learn to be soft and affectionate. I'm aggressive with other people and having sex. I still have my guard up in case I'll be hurt. Men want to use women and dominate them like my father did to me. Many men want to have sex with me. I'm careful who I go with. I've lived with several men, one for 6 1/2 years. It broke my heart to break up with him. He was too nice, too conservative about sex.

What my father did to me is like it happened yesterday. It still hurts deeply. I'm a strong and intelligent woman. I've read all about incest. Writing about it helps some. But it never leaves you.

I went to a psychiatrist five years ago. He said I wasn't ready, that he couldn't help me. I'm having psychotherapy now. I'm getting to know myself and realize what happened. Someday, I want to get married and have children.

When I was younger, no one could have helped me. I didn't trust anybody. I wouldn't have told a teacher. Trying to tell pupils about unwanted touching is no good. Or distress lines. Or distress centres. I knew it was wrong, but I couldn't ask for help. Social workers are useless. I've talked with other incest survivors. That's useless too. All they do is talk about it. You don't get anything from that.

What I really needed as a child was a warm and loving family. That's what all children need. It would stop incest.

Immediate Assistance Sought

Personal Account 13

I am a mother of a four year-old girl who was sexually abused. It is an experience I will never forget. I hope to God my daughter will.

The problem is that I don't know when it happened and that makes me feel responsible for what happened. I was getting my daughter ready to go out; she was talking away, but I wasn't paying much attention until she said "and he did this to me". She was playing with herself. I started asking questions. I asked "when did it happen?" She couldn't tell me. Where did it happen — "in the bed in the basement. He took my clothes off, washed me, and played with my private area." This man is married and has two girls. His five year-old daughter plays with mine.

It was reported to the police. They came and talked to us. They believe what happened and were very concerned, but there wasn't much they could do but talk to him because of my daughter's age and there was no witness.

I don't think a four year-old could make up a story like this. She doesn't know anything about sex. She doesn't read, hear or see anything like this. To me, a child between the ages of three and five will tell the truth more likely than an adult would.

When I questioned her why she didn't tell me before, she said he told her "don't say anything to your Mommy". Then she started to cry because she thought she was going to get spanked. He has gone and told some of the neighbours that I pressed charges against him. He thinks it is a big joke. What gets me upset is when things like this happen is that the same old excuse is used. They can't help it. "THAT'S NO EXCUSE". It doesn't give them the right.

They can get help and when they do, it is all forgotten. But what happens to the victims who can't forget? I don't know what can be done. The criminals have their lawyers to protect them, but who protects the children?

Why is it so hard for the police to do something? In fact, I feel sorry for them. They know these people are guilty, but the courts will not take the word of a child. It was suggested to us by the police that our children should not leave the property. How do you explain to a child that she can't play with her friends unless they come over to her house, and that you are doing it for her own safety and not punishing her?

Personal Account 14

My eight year-old son was raped by a 21 year-old man. This man is a brother of one of my daughter's friends. In a matter of 20 minutes, my son was lured into his place and raped. They live only two buildings from us.

I won't go into the tears, the rage and the heartache my family has gone through due to this act. My son was not beaten up, but he was raped. We took the proper steps. The police arrested the man. We took our son to the police station for his statement and then took him to the hospital to have tests done and pictures taken to make sure he was alright. This is something an eight year-old boy should never have to go through.

I have found out from this experience that a victim hasn't any rights. Once the man was arrested and pleaded guilty, there was nothing more I could do. I made several calls to legal aid, the police and the victim's protection office, but there wasn't a thing I could do. I got through to the Crown prosecutor because I couldn't understand how this lawyer could speak on our behalf when he had never spoken to us. I wanted the judge to know how I felt, what my son had gone through and how this crime affected our family. The prosecutor was very understanding, but he said it was up to the judge alone for sentencing. He said in crimes of this nature they feel the family has gone through enough without being in the court on the sentencing day. Believe me, I know we went through enough, but you feel so helpless. I still feel a judge should hear the parent's viewpoint.

The bottom line is — I have to wait and see what this man will get. He is now undergoing mental tests to see if he is sane.

In my opinion the laws should lean more on the victim's side. After all, we are the innocent ones. We didn't bring this situation on ourselves. He did. The guilty one has his lawyer to talk to. What about us?

We teach our children to be careful, not to talk to strange people, to let us know where they are. You can't keep them in the house at eight, 11 and 13 years of age. My faith in people has changed a great deal. I try to feel like myself again, but it is difficult at times.

I hope my letter will help in a small way. Our children are precious. We must find a way to protect them from these terrible acts.

Personal Account 15

Both of our female children have been sexually molested by an individual who was a family friend. We speak with first-hand knowledge of this problem.

The support offered by the city police was excellent, but similar support in the outlying community where the offences took place was sadly lacking. The fact that the offence was committed in another jurisdiction raised problems in dealing with the offender. The city police were eager to intervene, but were unable to, and those able to, were apathetic. We were ultimately placed in the position of having to confront this individual ourselves with no assistance from the police or health professionals.

This apathy was caused in part by our unwillingness to lay criminal charges against this individual. Of all the problems concerning sexual abuse, we feel most strongly about the inability of the system to deal in any way whatsoever with the individual who has committed the offence. The police were unable to lay charges without interviewing our daughters. They said

that even had they done so, the children's testimony would probably be unacceptable in court. Not wishing to expose our children to further trauma, we refused permission for the police or the social service agencies to interview them.

If we were to press charges, we must expose our children to the judicial system, thus seriously aggravating the offence with a negligible chance of a successful action. In refusing to accept these risks and lay charges, any hope of dealing with this sick mind was effectively dashed. In this current situation, society has unwittingly adopted a very permissive attitude. Sexual offences of this nature should be taken out of the realm of criminal law where the rights of the accused must be so vigorously defended. It would seem more desirable to place the accused in a position where he was at least forced to discuss the offence with professionals who are skilled at dealing with this sort of issue.

As the situation stands now, only a small minority of the adults who sexually molest children come in contact with the authorities. By removing the threat of prosecution, perhaps it would be possible to approach and deal effectively with these diseased individuals.

Personal Account 16

My children are seven and nine now, and they're lucky. About four years ago, my son, then five, came to me one morning not realizing that he'd tried something bad and said that my brother had tried something with him and his sister the night before. Luckily, he was unable to complete the act with either of them. With them having been so young, they were able to forget easily.

At the time I was very mad and went to the police about it. One officer talked to my son and then he went to talk to my brother. Of course, he denied it. They couldn't do a thing. All they could do was to warn him. There was a lot of hurt and anger in our family for a long time. It was very difficult to put it behind me.

My brother moved to ____ a year ago and lived with another brother for awhile. Suddenly, he moved back here and we never thought much of it. My mother was in the hospital for an operation and my thoughts were elsewhere. When I phoned my other brother to let him know how Mom was, he asked what reason our brother had given for moving back here. I told him he said there was no work there. He said that was a lot of crap, but that it was too much to go into over the phone, just that our brother was never allowed in their home again. I knew right then what was wrong. I asked him if it was what I thought it was. He said "yes". When his girlfriend got on the phone, she asked how I knew and I said "experience".

But the worst problem I had was the guilty feeling. I had never told my brother in ____ what had happened because I'd told a couple of people close to us who had kids that he was friends with, but they hadn't believed me. So I kept my mouth shut and hoped he'd be scared off. My kids forgot. But my brother's one daughter is 10. She was old enough to be terrified of my brother. She won't forget what he tried to do.

It's hard to live with the guilt, knowing it could have been much more serious for her. I know I'm not really to blame. My brother is sick. But it makes me so angry to know that nothing can be done to or for my brother. Nothing, that is, unless he's caught in the act. To think that he'd have to

actually hurt a small child before someone could lock him up and pick at his brains and find out why he's that way really makes me mad. What can I do?

My brother has moved to ____ and has a job. But he'll never change. He really doesn't think he's done anything wrong. He refuses to admit to a thing. The worst of it is, who's to say he'll never turn into another Clifford Olson? When my brother was in his early teens, he was caught with a younger male cousin. My father used a strap on him until his upper legs and rearend were black and blue. Maybe that just intensified the problem and made him crave the forbidden. Who really knows?

All I know is he must have had a problem early in life. He should have got help at the first incident. But not many people knew about it.

But there has to be an answer. There just has to be.

Personal Account 17

I found out in 1980 that my brother, age 20, was using my four-year old daughter for his sexual desires.

I told the police and I took her up to the ____ Hospital where they checked her out and said no damage was done. After the first court appearance, my daughter was still getting burning feelings in her private spot. I then took her to another hospital, ____ Hospital, where she was seen by a gynaecologist for the first time. The doctor told me she had a swelling and bruising and he had had his penis in her at least two inches.

Later, I found out from the hospital that my brother had venereal disease. That is where my daughter's burning came from. I asked the police to seize the reports from the ____ Hospital. They said it could not be done because we had already been to court.

Well, he got off. I am no longer living in ____, but in a small village. Now I find that my brother is visiting and hanging around ____ to try to talk to my daughter. My father lives here too, but my brother never bothers to visit him. Now he's hanging around, and God only knows, what he wants with my daughter.

My daughter is now getting psychiatric help at the ____ Hospital. I am living common-law and I can't afford it. But so far, she is doing really well and now he comes back.

I don't think it's fair. Why do child rapists get off scott-free? They don't go to jail. They don't get professional help. Nothing. I want to know why. My brother should have at least gotten professional help.

I feel that the laws for rape, child molesting and even gross indecency, and all other things like that, should be strict. People like my brother should pay for their crimes.

My little girl is suffering and will always have it on her mind. Now that he is loose, what about other children? What about kids who walk to school, the store or are playing in the playground? He could try it on any of them. And he would not be punished for his crime. It is not fair to the children.

I urge you to make stiffer laws so our children can live in a safer world. Can you help?

Pathways to Assistance

While the persons who wrote to the Committee are not representative, as they volunteered these accounts, of all young victims of sexual offences, their experiences reflect some of the trends common to the incidents of this kind. What is unusual about these accounts is not only the courage of these persons in relating events which hurt them deeply, but their ability to recollect these episodes as though they had happened yesterday. Their value is that they have been told by the victims in their own words.

Most were young children when the assaults first occurred. Their average age was about six years; three in four were girls. All of the assailants were adult males. Half of the offenders were members of the family or close relatives. The remainder were acquaintances and family friends and in one incident, a stranger was involved. All of the assaults occurred in private places, usually either in the home of the victim or the offender.

The assaults committed against these children included fondling, sexual molestation, homosexual acts and in about a third, genital or anal intercourse. Two-thirds of the children did not immediately report these assaults to anyone. When they were older, about a half of the victims told physicians about these acts. The remainder never consulted any type of helping service. Some later confided to their spouses what had happened to them as children; a few had told no one before contacting the Committee.

Why did so few of the young victims seek assistance? These persons, or the parents of children who had been assaulted or molested, explain in their own words why most of them did not even tell another family member. Two-thirds were too young when these incidents occurred to know that the sexual contacts were wrong. If they did know, then they were too ashamed about what had happened, or they were too afraid of their assailants to tell others. Among the few who later told a parent about these incidents, all were initially disbelieved. These accounts indicate that in order for a child to give evidence, the pre-requisites for this step to be taken are the recognition that an act was wrong and the strength to overcome the fears or the shame involved in telling other persons about these acts.

On the basis of the accounts it appears that there is a greater likelihood of a child telling a parent and of initiating a police investigation in situations in which the assailants either are less intimate family members or are friends, neighbours or acquaintances.

The police were contacted in about a third of these incidents of sexual assault of children. When the police were contacted, the sexual contacts stopped completely. For these children, police intervention provided a clear-cut and positive outcome. There is no indication that the investigations by the police had harmed the young victims. In one instance, the parents of two daughters had been unwilling to lay charges to preclude their children from experiencing more trauma. While the work of the police in different parts of

Canada was endorsed by the persons who had sought their assistance, much frustration was expressed about the inadequacy of existing laws to accept the evidence of children, about the treatment of offenders and about their punishment.

There were no witnesses to any of these incidents. There was only one instance in which a medical examination found evidence of physical injury and venereal disease. This evidence became known only after the court had dismissed the case. In other instances, the ages of the children or their perceived inability to give evidence were the reasons why charges were not laid. With the exception of two cases, none of the assailants had been contacted by child protection services. Also, none of the assailants had been convicted. Psychiatric help had been provided for only one offender.

The accounts document the difficulties involved in determining the nature of the potential long-term effects of sexual assaults. The victims remember the assaults with anguish and anxiety, and in some instances, with a burning anger. One young male child had been physically injured and a girl had contracted venereal disease. About a third of the victims reported that much later in life they had experienced behavioural disorders or that they had received psychotherapy. It is unclear whether these problems constituted pre-existing conditions which may have been exacerbated by the sexual assaults, whether they had stemmed from them, or whether they had been influenced by events occurring later in their lives.

What stands out sharply in these accounts about child sexual abuse is the sense of helplessness, uncertainty and ignorance about what the victims felt they might have done when they had been assaulted as children. Most did not then know to whom they should have turned for help. When the assault was committed by someone whom they knew well, they felt constrained from telling even other family members. Several of the children did not know that the sexual acts which had been committed against them were wrong.

Few of the child victims had been examined medically. None voluntarily sought out social workers, teachers, the clergy or community agencies immediately following the assaults. The victims either did not know about these services, or their personnel were not sufficiently trusted by the children to confide these experiences to them.

The persons who gave accounts to the Committee did so to provide a better understanding of how children in the future might be more effectively protected from sexual assaults. Most of the persons said they had not understood what had been done to them, and that if they had known, they might at least have had the option of seeking help. They make a strong and eloquent appeal that in the future Canadian children should have this option that could be brought about by a greater public and professional awareness of all aspects of child sexual abuse.

The personal accounts highlight the profound nature of the complex issues that are involved in child sexual abuse. The experiences that are recalled by these persons are confirmed by the statistical findings obtained in the surveys which were undertaken by the Committee.

Chapter 6

Occurrence in the Population

The findings of the National Population Survey constitute a baseline for estimating the extent to which sexual offences have been committed against Canadian children, youths and adults. **The main findings of the survey are that at sometime during their lives, about one in two females and one in three males have been victims of unwanted sexual acts. About four in five of these incidents first happened to these persons when they were children or youths.**

The National Population Survey drew upon the experience of a representative sample of Canadians living in all regions of the country. The size of the sample was larger than that usually drawn in national surveys. With respect to the survey's sampling error, the chances of the sample not being representative were between the statistical confidence levels of 0.02 and 0.03 which means that if repeated comparably drawn samples of the population were undertaken, then similar results would likely be obtained from between 97 and 98 per cent of the samples. For most national surveys, the 0.05 level of statistical confidence is adopted.

Until more comprehensive and detailed survey findings are available for the Canadian population, the Committee accepts the results of the National Population Survey as a basis upon which estimates may be made of the occurrence of sexual offences against Canadians. This survey, the first of its kind for Canada with respect to the detailed nature of the questions asked, indicates that sexual offences are endemic, that a significant number of both females and males have been victims of these acts, and that children and youths are disproportionately at risk.

The National Population Survey was undertaken to obtain information in relation to issues specified in the Committee's Terms of Reference. The Committee was asked to examine: "the incidence and prevalence of sexual offences against children and youths in Canada. Where possible, comparisons are to be made with the incidence and prevalence of sexual offences in general". The Committee was also asked to consider "whether such offences are likely to be brought to the attention of the authorities" and "the relationship between the enforcement of the law and other mechanisms used by the community to protect children and youths from sexual abuse and exploitation".

On the basis of its review of completed community surveys of sexual offences against Canadians, the Committee found that there was insufficient information available in these reports dealing directly or in sufficient detail with the issues specified by its Terms of Reference. As a result, the Committee undertook a National Population Survey of Canadians who were age 18 years or older. Information was not obtained directly from children and youths themselves. To have collected such information from children would have entailed obtaining parental consent, which in some instances, would have involved seeking permission from family members or guardians who may have committed sexual offences against minors. While it is recognized that the findings of a restrospective analysis may be affected by an erosion in the ability of persons to recall events, for this reason, the results obtained are likely to be an underestimate rather than an overestimate of the occurrence of incidents of this kind. Because of the intensely personal nature of these acts, the Committee found in its meetings with a number of victims and on the basis of its other surveys that most victims clearly and vividly recalled these incidents.

Elsewhere in the Report, findings are presented from the surveys of cases of sexually assaulted children and youths known to the police, child protection services, hospitals and correctionai services. The findings of these surveys describe in detail the circumstances of victims, the types of sexual acts committed and the services provided by these agencies. The results of the National Population Survey show that these public services dealt with only a small fraction of the number of the children and youths who had actually been sexually abused. The principal reason for so few cases being known to these services is that most victims of sexual offences did not seek their assistance, and when such help was sought, they turned primarily to physicians, the police, and to a much lesser extent, social services including child protection workers.

Design of the Survey

Prior to the implementation of the national survey, an initial draft of the questionnaire was pretested in a pilot survey. On the basis of previous research involving the reporting of sexual offences by victims, it was concluded that how such information was obtained affected the types and completeness of the replies received. Many persons are reluctant to discuss these sensitive personal matters with strangers. Such information is only likely to be volunteered in situations where either an informant completely trusts another person, or where the anonymity of the respondent is assured. In order to minimize the influence of external factors, the persons selected in the National Population Survey were asked to complete the questionnaires themselves.

Before the survey was undertaken in each of 210 communities across Canada, a supervisor of the Canadian Gallup Poll spoke with the local Chief of Police or the Police Public Affairs Officer. At these meetings, the purpose of the survey was outlined, a copy of the questionnaire provided, and the police force was asked for its co-operation in the event that questions were raised

about the survey's authenticity. In undertaking the survey, the instructions given to the staff of the Canadian Gallup Poll were:

> "Introduce yourself and hand your identification card to the respondent. Then say, 'this letter will explain our current study, would you read through it please'. Hand the questionnaire which is in a sealed envelope to the respondent. Have your respondent complete it - and seal it in the enclosed envelope."

In the letter given to each person asked to participate in the survey, he or she was informed that:

> "Because of their personal nature, we ask you to answer the questions without the involvement of our interviewer, who has not seen the questionnaire, and who will not be able to discuss them with you. The subject matter is of serious concern today. It is one on which little or no information is available.
>
> The information requested will be held in strictest confidence. There is no place on the questionnaire to identify yourself, and we ask that you do not do so. Your own information will be anonymous.
>
> When you have completed the questions, there is an envelope inside for you to seal your answers. All questionnaires will be returned to the Canadian Gallup Poll, still sealed.
>
> If you have any concerns about the authenticity of this survey, please contact the Police Force Public Affairs Office at (address and telephone number given)."

The National Population Survey was undertaken between the last week of January and the first few days in February, 1983. Following its completion, a story was carried nationally about the survey by newspapers and radio and television stations. Because of the timing of this news report, its publication did not affect the collection of information for the survey. In the city where the story was initially reported, the local newspaper noted that although "some very explicit questions" had been asked in the survey "the police have not received a single complaint". Of 2135 persons contacted, 13 refused to take part in the survey and 114 returned incompletely filled out questionnaires. The response rate to the survey was 94.1 per cent (2008 of 2135). The staff of the Canadian Gallup Poll conducting the survey reported that, as illustrated by the reports cited below, most persons from whom information was obtained took time to review carefully the questionnaire and that they gave serious consideration to the issues raised by the questions asked.

- *Male*. After reading the letter, he was eager to participate. He thought the subject matter was of great concern. Quite interested in the results.
- *Female*. Thought the subject was important and concerned about it. She said it reminded her of taking an exam.
- *Male*. Sat on stairs using my clip board to fill in the questionnaire. No expression, no comments. At the end, said he was pleased to have been able to do it.
- *Female*. After opening an envelope and reading the introduction, she commented that it might be a bit racy for an older person. At the beginning,

she sounded surprised, but enthusiastic. At the end, she carefully checked back each page.

- *Male*. Wanted me to leave it with him before he had read the letter. Explained that that was impossible. After reading letter, was a little reluctant; I pointed out he could phone number on the letter. He was going to do that, but he changed his mind and decided to do the survey. He sat down at dining room table whilst I sat away from him in living room section of the room. He read first page, then got up and took questionnaire into kitchen so I was not able to observe him. He seemed subdued when escorting me to the front door. He talked about the weather, but wished me good luck with my survey.
- *Female*. Wanted to talk at first. She said she was against "those terrible magazines, topless bars, and girls degrading themselves". I had to interrupt her, telling her I couldn't discuss anything. Satisfied expression on face while doing it. When she said goodbye, she said, "very good this is being done".
- *Male*. Wanted to fill it in later and mail it, but agreed to do it. Asked partway through, if women were also doing the survey. No comment or change in expression when I affirmed this. His wife came in and asked what he was doing. He handed her the letter and got up off the sofa and went to a chair. When his young son came in, he closed questionnaire. His wife got up and took her son out of room. His last (and only) comment was, "good idea, but I hope people tell it like it is. Will you get enough out of it? I hope you aren't putting down people's names and addresses". I assured him no record was being made. He looked relieved.
- *Female*. Seemed embarrassed and was fidgety, during filling out the questionnaire. When her son (young teens) came into room, she told him rather curtly she was busy and to sit down and talk to me. Pink face, didn't look at all comfortable, but made no comments, other than a question as to anonymity of persons and locations.
- *Male*. He never looked up until he was finished. He seemed to do a lot of writing at the end. I asked if he minded doing it. He replied, "No".
- *Female*. Opened envelope. Then she laughed and said, "You are interviewing men also?" I replied, "Yes". Then she got right down to the questionnaire. I noticed she swallowed hard during the middle of the questionnaire, but she kept on going.
- *Male*. Started reading and didn't look up. During interview, he wanted to be assured that I was not keeping a record of his address or I had any way of identifying him. I assured him I wasn't. He also asked if females were being interviewed. At the end of the interview, he kept flipping the pages back and forward.

Among the replies received from 2122 persons, nine of 114 who did not complete the questionnaire wrote negative comments about the purpose or contents of the questionnaire. These persons did not complete the section of the questionnaire requesting social and demographic information. Some of the reasons for not participating in the survey were:

- "Your questionnaire is pornographic. Most of this questionnaire isn't applicable to my experience. Some people (older than I am) would have a heart attack at these questions."

- "This survey is a sheer waste of taxpayer's money. It could be better utilized in many better ways than on this garbage."
- "I am sorry such important issues have had to be typed, put in print, consuming tax-payers money. All through it, there is a lack of concern and indifference. It is time Canadians got things together and began to live decently."
- "I do not like loaded questions. You only get the answers you want to hear, so piss off."
- "I refuse to answer this questionnaire. It's stupid."
- "This is too personal. I am a very faithful wife and also believe my husband is too. I think our sex life is not anybody else's business, but ours."
- "This is a waste of paper. Why don't you - please - mind your own business."

Despite the fact that they were asked direct and explicit questions about whether they had been victims of unwanted sexual acts, most of the persons contacted agreed to participate in the survey. Many of them took time to add written comments. The completed questionnaires were sealed in envelopes by the persons participating in the survey, returned to the survey's staff, and subsequently, were forwarded to the Canadian Gallup Poll where the replies were coded.

Extent of Occurrence

The 2008 persons in the National Population Survey were asked whether any unwanted sexual acts had ever been committed against them and how old they were when these incidents had occurred. Preceding these questions, definitions were given of "the sex parts" (e.g., vagina, penis, crotch, and anus) of a person's body. The questions dealing with unwanted sexual acts elicited information about: exposures, threats, touching and attacks. The questions asked were:

- Has anyone ever *exposed* the sex parts of their body to you when you didn't want this? The reply categories were: never happened to me; and circle as many as apply of penis, woman's crotch, breasts, buttocks, nude body, and other (specify).
- Has anyone ever *threatened* to have sex with you when you didn't want this? The reply categories were: never happened to me; and a listing of the number of times these incidents had occurred.
- Has anyone ever *touched* the sex parts of your body when you didn't want this? The reply categories were: never happened to me; and circle as many as apply of: *touched* your penis, crotch, breasts, buttocks and anus; and *kissed/licked* your penis, crotch, breasts, and anus; and other types of touching (specify).
- Has anyone *ever tried to have sex* with you when you didn't want this, or *sexually attacked* you? The reply categories were: never happened to me; and circle as many as apply of: *tried* putting a penis in your vagina, tried putting something else (a finger or an object) in your vagina, tried putting

a penis in your anus, and tried putting something else in your anus; and *forced* a penis in your vagina, forced something else in your vagina, forced a penis in your anus, and forced something else in your anus; *stimulated* or *masturbated* your crotch or penis; and other acts (specify).

A summary of the specific types of unwanted sexual acts reported by persons in the national survey is given in Chapter 7.

Since some persons had been victims of more than one unwanted sexual act, the results listed are non-accumulative with respect to the types of sexual offences reported. About three in five persons in the national survey (57.9 per cent) said that they had never been victims of sexual offences. There were sharp differences between females and males with respect to their having been victims. About one in two females (53.5 per cent) said that she had experienced these types of unwanted sexual acts. In contrast, slightly less than one in three males (30.6 per cent) had been a victim. About one in five (22.3 per cent) of the female victims reported two or more sexual offences in comparison to about one in 15 males (6.6 per cent) who had been involved in two or more such incidents.

Table 6.1

Types of First Sexual Acts Committed Against Males and Females

Type of Sexual Act Committed	Sex of Victim					
	Males (n = 1002)		Females (n = 1006)		Total (n = 2008)	
	No.	Non-Accum. %	No.	Non-Accum. %	No.	Non-Accum. %
None	695	69.4	468	46.5	1163	57.9
Exposed to	89	8.9	198	19.7	287	14.3
Threatened	50	5.0	106	10.5	156	7.8
Touched	128	12.8	236	23.5	364	18.1
Attempted/ assaulted	106	10.6	222	22.1	328	16.3

National Population Survey. Non-accumulative totals. Two or more sexual acts were committed against 22.3 per cent of female victims and 6.6 per cent of male victims.

When each category of unwanted sexual act is considered, as summarized in Table 6.1, the ratio between females and males with respect to the proportions victimized is consistently about two-to-one. While about one in seven persons (14.3 per cent) reported an exposure, acts of this kind had been committed about twice as often against females (19.7 per cent) as against males (8.9 per cent). About one in 13 persons (7.8 per cent) said that another person had threatened to have sex with them. Such threats were reported by about one in 10 females (10.5 per cent) and by one in 20 males (5.0 per cent).

The persons participating in the National Population Survey were asked if they had ever experienced an unwanted touching of "a sex part" of their bodies. These acts were reported by about one in six persons (18.1 per cent) with double the proportion of females (23.5 per cent) as that of males (12.8 per cent) reporting such incidents. In response to the question whether anyone had ever tried to have sex or had forcibly sexually assaulted them, about one in five females (22.1 per cent) and one in 10 males (10.6 per cent) said that they had been victims of these acts.

Sex and Age of Victims

If they had been victims of sexual offences, persons in the National Population Survey were asked how old they were when these incidents had first happened to them. As noted, some persons reported that they had been victims of two or more offences, and in order to preclude a double-counting of reported offences which may have been committed against a person during a single year, only the most serious offence was included in the analysis undertaken.

The findings given in Tables 6.2 and 6.3 list the types of sexual offences experienced by the age of the victim when the act had first occurred. Since some persons did not report either their age or sex, the total number of offences listed in these tables is somewhat smaller than the total of all reported offences.

The majority of the victims of sexual offences were children and youths when these incidents had first happened to them. Relatively few victims were very young children under age seven. It is sometimes suggested that women are primarily the victims of sexual offences. The findings of the National Population Survey indicate that, on average, fewer than one in five persons of both sexes was an adult when he or she was a victim for the first time of an unwanted sexual act. The majority of victims were children and youths between 12 and 18 years-old.

The trends by age were comparable for persons of both sexes. Slightly over half of the female victims of exposers were under age 16; about one in six was

Ages of Female Victims	Female Victims			
	Exposed To	Threatened	Touched	Attempted/ Assaulted
	Accumulative Percentage			
Under age 7	6.5	—	3.1	6.3
7 – 11	27.7	6.9	15.5	22.8
12 – 13	41.3	16.1	28.9	32.2
14 – 15	55.4	31.0	47.5	48.0
16 – 17	66.8	52.8	68.1	69.2
18 – 20	84.2	78.1	83.0	85.0
21 years and older	100.0	99.9	100.0	100.0

Table 6.2

Ages of Males by Types of First Unwanted Sexual Acts Committed Against Them

Ages of Male Victims	Types of First Sexual Acts Committed Against Male Victims							
	Exposed To		Threatened		Touched		Attempted/ Assaulted	
	No.	%	No.	%	No.	%	No.	%
Under age 7	4	5.8	1	3.6	6	5.7	1	2.4
7 – 11	11	15.9	2	7.1	11	10.5	5	12.2
12 – 13	10	14.5	1	3.6	11	10.5	4	9.8
14 – 15	11	15.9	4	14.3	13	12.4	9	21.9
16 – 17	13	18.8	5	17.8	22	20.9	12	29.3
18 – 20	6	8.7	8	28.6	21	20.0	6	14.6
21 years and older	14	20.3	7	25.0	21	20.0	4	9.8
TOTAL	69	99.9*	28	100.0	105	100.0	41	100.0

National Population Survey. Information missing on ages of males for: exposed to (20), threatened (22), touched (23) and attempted/assaulted (65).

*Rounding error.

Table 6.3

Ages of Females by Types of First Unwanted Sexual Acts Committed Against Them

Ages of Female Victims	Types of First Sexual Acts Committed Against Female Victims							
	Exposed To		Threatened		Touched		Attempted/ Assaulted	
	No.	%	No.	%	No.	%	No.	%
Under age 7	12	6.5	—	—	6	3.1	8	6.3
7 – 11	39	21.2	6	6.9	24	12.4	21	16.5
12 – 13	25	13.6	8	9.2	26	13.4	12	9.4
14 – 15	26	14.1	13	14.9	36	18.6	20	15.8
16 – 17	21	11.4	19	21.8	40	20.6	27	21.2
18 – 20	32	17.4	22	25.3	29	14.9	20	15.8
21 years and older	29	15.8	19	21.8	33	17.0	19	15.0
TOTAL	184	100.0	87	99.9*	194	100.0	127	100.0

National Population Survey. Information missing on ages of females for: exposed to (14), threatened (19), touched (42) and attempted/assaulted (95).

*Rounding error.

an adult when she had first been a victim of this offence. The likelihood of a person threatening to have sex with a female was more frequently experienced by adolescents than younger girls. Females under age 21, with the exception of those under age seven, were about equally at risk of being touched on the sexual parts of their bodies and of assailants trying to have sex with them or of actually sexually assaulting them.

About half of the males who reported having been victims of acts of exposure were under age 16 when incidents of this kind had first occurred. Only a small percentage of males said that someone had sexually threatened them and proportionately more of these incidents were reported by older rather than younger adolescent males. Under the age of 21 years, the risk of a male child or youth having been sexually touched was about the same for each age category. About half of the males whom assailants had tried to attack or who had been assaulted were boys under age 16.

Ages of Male Victims	Male Victims			
	Exposed To	Threatened	Touched	Attempted/ Assaulted
	Accumulative Percentage			
Under age 7	5.8	3.6	5.7	2.4
7 – 11	21.7	10.7	16.2	14.6
12 – 13	36.2	14.3	26.7	24.4
14 – 15	52.1	28.6	39.1	46.3
16 – 17	70.9	46.4	60.0	75.6
18 – 20	79.6	75.0	80.0	90.2
21 years and older	99.9	100.0	100.0	100.0

The National Population Survey was designed to obtain information about whether persons had ever been victims of sexual offences and how old they were when such incidents had first happened. While the survey did not focus specifically on the experience of adults who had been victims, this type of information was obtained if such incidents had first been committed against persons when they were age 21 or older. The results of the survey indicate that a majority of the victims of sexual offences were children and youths when these acts had first been committed against them.

Regional Distribution

Although information was not obtained in the National Population Survey about where victims had lived when the offences had been committed, their residence at the time of the survey was reported.

Region	Victims of First Sexual Offences
	Per Cent
Newfoundland/Prince Edward Island	28.3
Nova Scotia/New Brunswick	42.0
Quebec	40.2
Ontario	48.2
Manitoba/Saskatchewan	41.8
Alberta/British Columbia	45.4
NATIONAL AVERAGE	42.1

On the basis of where victims resided in 1983, regional differences occurred in the reported prevalence of sexual offences. While the national average of the proportion of males and females who had been victims was 42.1 per cent, reported incidents occurred in slightly over a quarter (28.3 per cent) of residents living in Newfoundland and Prince Edward Island in comparison to about half (48.2 per cent) of those living in Ontario. The overall findings indicate that in no part of the country can it be said that the problem does not exist. The findings of the National Population Survey show that more effective means of reaching victims and of affording them protection must be developed in all regions of the country.

Intergenerational Trends

Reflecting the changing nature of the values held by Canadians, there has been a more open discussion in recent years about all aspects of human sexual behaviour. Issues once rarely mentioned in public are frequently reported upon by the news media. Because of a heightened awareness of these issues and a growing concern with the occurrence of sexual offences, it is sometimes believed that there has been a sharp increase in the number of violent sexual acts committed. In light of incremental population growth, there is no doubt that through time the volume of these crimes has risen. There is no historical documentation available, however, to determine whether proportionately more persons now than in the past are victims of sexual offences.

With the exception of historical crime statistics, no longitudinal analysis of the actual number of sexual offences committed is feasible. Even so, the findings of the National Population Survey provide a means whereby a comparison can be made of the experience of younger and older persons in this respect. The accuracy of findings dealing with events occurring in the past is

contingent upon the ability of persons to recall precisely the details involved in particular incidents. In general, the findings of psychological studies dealing with learning and memory suggest that an erosion in the ability to recall events increases with the amount of time elapsed. Counter-balancing this trend, however, is the likelihood that persons will recall certain significant events in which they had been involved, such as having been victims of crimes. Because of more emphasis on the teaching of sex education in schools, it is likely that younger persons in comparison to older adults might be better informed and more willing to discuss openly these issues. As a result, to the extent that the passage of time affects a person's accuracy of recall, it is likely that younger persons reported most of the offences committed against them in comparison to older persons who may have under-reported such incidents.

With the exception of youths between 18 and under 21 years-old who proportionately reported more first offences than older persons, the findings in Table 6.4 show that there was no significant variation in these respects for both adult males and females of other ages. Of persons between 18 and under 21 years-old, seven in 10 females (70.2 per cent) and about four in 10 males (38.6 per cent) had been victims of first sexual offences. On average, about half of the adult females of all other ages reported that they had been victims of these offences at least once during their lives. While there was more variation by age with respect to first incidents reported by adult males, on average, less than one in three (30.4 per cent) had experienced an unwanted sexual act.

Table 6.4

Present Ages of Persons Who had been Victims of Sexual Offences

Present Ages of Persons	Sex of Victims							
	Males				Females			
	No Offence Reported		One or more Offences Reported		No Offence Reported		One or more Offences Reported	
	No.	%	No.	%	No.	%	No.	%
Under age 20	43	61.4	27	38.6	17	29.8	40	70.2
21 – 30	202	68.7	92	31.3	145	49.7	147	50.3
31 – 40	205	75.6	66	24.4	125	44.2	158	55.8
41 – 50	107	67.3	52	32.7	73	45.1	89	54.9
51 – 60	66	64.7	36	35.3	56	49.1	58	50.9
61 years & older	60	70.6	25	29.4	45	49.5	46	50.5
TOTAL	683	69.6	298	30.4	461	46.1	538	53.9

National Population Survey. Information missing on age for 21 males and 7 females.

Since the proportion of persons under age 21 included in the National Population Survey is small, the experience of this group may not indicate an

evolving long-term trend resulting in a higher prospective incidence in the occurrence of sexual offences. More research is warranted to assess the nature of the risks experienced by persons in this age group in comparison to those of children and adults.

The main findings of the National Population Survey with respect to the reporting by adults of first sexual offences are that:

1. As many of the older as of the younger adults said that they had been victims of sexual offences.

2. For persons of all ages who were victims, a majority of the first incidents of this kind had happened to them when they were children or youths.

Based on reports of a sample of adults of all ages, the findings of the National Population Survey are congruent with the findings of the Committee's review of historical crime statistics for sexual offences (Chapter 13, *Historical Statistical Trends*). In both instances, each drawing on a different source of information, the findings indicate that in recent decades there has been no statistically appreciable increase in the incidence of sexual offences committed against Canadians. There is no doubt, however, that the number of these crimes is alarmingly high.

The best evidence available to the Committee suggests that the volume of these crimes in relation to population growth has remained at a relatively constant level for some time. In this respect, the major change that appears to have occurred is not so much an alteration in the incidence of these offences, but the fact that Canadians as a whole are becoming more aware of a deeply rooted problem whose dimensions have not significantly shifted in recent decades. More persons and community action groups are now seeking to redress this situation. The Committee's findings show that the principal victims of first sexual offences are children and youths, and that, while proportionately females are twice as often victims as males, members of both sexes are victims of these crimes.

Seeking Assistance

The results of the National Population Survey confirm the trends noted in the personal accounts of victims (Chapter 5) that only a small fraction of first sexual offences against persons is reported to the authorities. While this fact was previously realized, its proportions had not hitherto been documented on the basis of a representative national sample of the Canadian population. In the National Population Survey, persons who had been victims were asked if they had reported these incidents and whom they had told. If they had not sought assistance, they were asked why they had not sought help. The principal findings from the national survey show that:

1. Proportionately more female than male victims of first sexual offences had sought assistance.

2. Assistance was more often sought in relation to more serious than more minor sexual offences.

3. The primary sources of assistance involving the public services (beyond victims telling family members and close friends) were medical services and the police. Few victims resorted to other public services or special programs, such as: distress or hot lines, child protection agencies, rape crisis centres or women's hostels, school staff, public and mental health services, lawyers or criminal injuries compensation boards.

4. Most of these incidents were not reported by victims because they felt these matters were too personal or sensitive to divulge to others, and because many of them were too ashamed of what had happened.

Female victims were more than twice as likely (23.8 per cent) as male victims (11.1 per cent) to have sought assistance. However, a majority of victims of both sexes had not done so. For three in four female victims and about nine in 10 male victims, these incidents had been kept as closely guarded personal secrets.

Table 6.5

Victims Seeking Assistance by Types of First Sexual Offences

Type of First Sexual Offence Against Victim	Victims Seeking Assistance					
	Males			Females		
	Number of Victims	Number of Victims Seeking Assistance	Proportion of Victims Seeking Assistance	Number of Victims	Number of Victims Seeking Assistance	Proportion of Victims Seeking Assistance
	Number	Number	Per Cent	Number	Number	Per Cent
Exposed to	89	2	2.5	198	20	10.1
Threatened	50	2	4.0	106	15	14.2
Touched	128	13	10.2	236	30	12.7
Attempted/ assaulted	106	17	16.0	222	63	28.4

National Population Survey. Non-accumulative results for specific types of sexual offences with proportions of victims seeking assistance calculated on actual totals of male (307) and female (538) victims respectively.

With respect to the type of sexual offence committed, a gradient occurs: fewer of the less serious incidents were reported and assistance was more often sought by victims of more serious assaults. Males were involved in few incidents of exposure and virtually none reported them. Although proportionately four times as many females as males reported exposures, nine in 10 females did not seek assistance following these incidents.

More victims of both sexes reported threats than exposures with about one in seven females (14.2 per cent) telling another person about incidents of this kind. About one in eight females and one in 10 males sought assistance as a result of someone having "touched the sex parts" of their bodies when they had not wanted this to happen.

The offences for which victims had proportionately sought more assistance were those where a person had attempted to have vaginal or anal intercourse or where victims had been sexually attacked and forced to have vaginal or anal intercourse. More than one in four female victims and one in six male victims had reported these types of incidents.

In considering where victims seek assistance, information can be obtained either from the records of services and agencies or from accounts reported by victims. On the basis of information obtained from the former source, it might appear that a substantial number of public services and community agencies is being contacted by victims. If the latter type of information is drawn upon, such as that obtained in the National Population Survey, then it is evident that while many different programs had been contacted, there were only three or four principal sources of assistance which had consistently been turned to by most victims.

Of the victims who had sought assistance, about half of the females (50.6 per cent) and about a quarter of the males (27.6 per cent) had told a family member or a friend. The police were contacted by one in 11 female victims (9.0 per cent) and by about one in 14 male victims (6.9 per cent). About the same proportion of both males and females seeking assistance, one in seven, either had visited a physician in community medical practice or the outpatient department of a hospital. The only other public services turned to for assistance, in each instance by only between two and four per cent of victims, were child protection services and school teachers or counsellors. All of the other types of helping services either were not turned to at all, or by less than two per cent of the victims who sought assistance. These seldom used services included: religious leaders (clergymen, priests, rabbis); help or distress lines; lawyers; public health and mental health services; sexual assault centres, rape crisis centres and women's hostels; and criminal injuries compensation boards.

Some of the services which were infrequently turned to by victims, such as help or distress lines, sexual assault/rape crisis centres and women's hostels, have only recently been established and this fact partially explains why they may have been proportionately less used, particularly by older persons who had been victimized when they were children. Other types of infrequently used services, however, included some which are generally well established and which constitute a recourse for persons to turn to in times of distress or need. Services of this type include those provided by religious leaders, lawyers, public health and mental health workers, school teachers and counsellors, child protection workers and criminal injuries compensation boards.

Not Seeking Assistance

Each person in the National Population Survey who had been a victim of a sexual offence was asked if he or she had not sought assistance, "Why didn't you tell anyone or report this?"

Reason Incident Not Reported	Males	Females
Too personal a matter to tell anyone	1	2
Too ashamed it happened	3	1
Afraid it wouldn't be believed	7	4
Too young to know it was wrong	6	7
Felt partly responsible it happened	6	5
Wasn't important enough to do anything	2	8
Didn't bother me that much	5	9
Didn't want to hurt other members of family	7	6
Didn't want to hurt the person who did it	4	7
Afraid of person who did it	8	3
Threatened not to tell by person who did it	9	8
Too angry to do anything	9	8
Other reasons	10	10

The reasons most frequently cited for not seeking assistance were that: the victims were too ashamed of what had happened; they felt it was too personal a matter; for females, fear of the person who had committed the act; and for males, the event wasn't important enough to do anything about it. Although over four in five of the sexual offences reported in the National Population Survey had been committed against persons when they had been children and youths, few victims said that they had not sought assistance because they had been "too young to know it was wrong". The written comments of persons in the National Population Survey explain in their own words why most of them had refrained from seeking assistance.

- *34 year-old preschool worker.* "I was approached when about 13 by a family friend and fondled on nights when he realized my parents would be out. If I had been able to discuss it with my parents and known that they would do something about it, I would have told. I felt it would only have been more trouble".
- *56 year-old nurse.* When she was 12, her middle-aged uncle "petted my breasts and vagina. It was many years ago. I suppose I should have told my Mother".
- *39 year-old manager.* When he was 14, he was "delivering papers - collecting money - and this man asked me in, and just made a quick grab with his hand at my crotch. I told no one. A young person should be told what to do, and whom to see for any sexual violation".

- *45 year-old mother*. When she was seven, a 15 year-old boy and his friend "held me down and removed my pants and underwear for a look and feel. I escaped. My father spoke to him and his family and threatened to call the police if it happened again".
- *20 year-old secretary*. When she was 13, a family friend attempted to rape her: "If I was older and not made to feel so ashamed of it, I would have told the proper authorities, but at the time, I was so young and very ashamed of the whole thing".
- *18 year-old clerk*. When he was 12, a delivery man in his twenties "lay on top of me and masturbated himself". He told his mother and the man was charged by the police. "No harm was done to me, but the perpetrator was probably done harm by the police. The family doctor only hurt me by probing my anus. It would have been better for all concerned if I hadn't reported it".
- *60 year-old grandmother*. When she was 13, her father had fondled her breasts and crotch. She told no one. "I felt it was O.K. to do this - it was done only in fun".
- *36 year-old nursing aide*. When she was eight, "we were play-acting. An older boy placed a pocket-watch in my pubic area. By making little of the incident, I believe no harm was done. Sometimes, exploiting things does more damage than respecting the privacy of them".
- *51 year-old salesman*. When he was 10, "a man in a theatre reached down and grabbed my penis during the show. There is no defence in a darkened theatre. The show never had sexual overtones. I guess the guy was sick".
- *34 year-old mother*. When she was 13, she was threatened several times by a 19 year-old employer. "The guy tried to put his finger in my vagina and put his hands all over my body. After that, he told me that if I told, he would really get me the next time, so I didn't tell anyone. I thought all males were animals. I saw a doctor twice weekly. People like me feel too ashamed to tell or too scared to tell. Society, whether they believe it or not, are too quick to blame the girls".
- *21 year-old student*. When she was 13 she was grabbed on her breasts and crotch by her 15 year-old date who threatened to have sex with her. "My boyfriend had several bottles of beer. His friend encouraged him to try drugs. Everyone was experimenting with sex, so I felt it was a normal reaction for him". She told no one about the incident.
- *48 year-old teacher*. When he was 19 "while sleeping with a male friend, he manipulated my penis. No one was told. I was naive and ignorant about such matters. I had no way of dealing with it. Many years later, the person was hospitalized off-and-on in a mental institution".
- *40 year-old clerk*. When she was eight, her step-father regularly had intercourse with her. She subsequently had a child. Because she was afraid, "the family kept it very quiet. I feel mothers should be at home with their children, instead of working or running around".
- *20 year-old secretary*. When she was between 12 and 13 years-old, "a girl friend's father touched her friends while pretending to read us stories. I might have known how to deal with this situation if I had been more aware as a child of sexual abuse and had been told by my parents or teachers".

- *44 year-old salesman.* When he was about four years old, he was "sexually molested by a baby-sitter" - an 18 year-old female. "As a small child, this left a bad memory. Keep care of your kids yourself. Don't farm them out to others".
- *36 year-old mother.* When she was 10, her "stepfather threatened to make me go to bed with him. I didn't tell 'cause I was scared to death". He fondled her vagina. "I was really upset, and felt someone should notice what was happening to me. Finally, I ran away from home".
- *41 year-old researcher.* When she was 15, her next door neighbour "was physically intimate with me without vaginal entry. I never told anyone. I thought I was being grown-up. I was ashamed and unable to tell anyone. Whatever happened, my father would have been ashamed and have blamed the man. What I didn't understand, until recently, was the extent of my own sense of complicity".
- *30 year-old manager.* When he was 19, a 45 year-old "homosexual picked me up", threatened him and felt his penis. He told his friends. "They beat the hell out of him. Homosexuals are more accepted now. They should be allowed to do what they want together. If they try force, they should be charged with rape and punished".
- *19 year-old student.* When she was 13, she was sexually attacked by two students (ages 16 and 17) and two adults (a gas station owner and a retired man). They sexually fondled her, kissed her crotch and forced their fingers into her vagina. "I was very young. By the time I realized what was happening, I tried my hardest to get out of the situation. I managed to escape before damage was done. I didn't say anything to anyone because I was so embarrassed".
- *30 year-old mother.* When she was 14, "an over zealous date (a 21 year-old male) made persistent physical contact. My situation is a fairly common problem. But it was extremely frightening. Fortunately, I was able to talk freely with my mother. I do feel that too little is said against this 'normal' behaviour".
- *30 year-old physician.* When he was 14, a 55 year-old acquaintance fondled his penis and masturbated himself on top of him. "At the time I was 14, but I feel I handled the situation well enough. The offender learnt his lesson".
- *42 year-old clerk.* When she was nine, a cousin fondled her breasts and crotch. "A cousin tried to fondle me. He held me down and I fought back". She told her mother, but "because of ignorance, nothing was exposed - to keep peace in the family".
- *22 year-old mother.* When she was 13, a farmer who was a close family friend, "touched my private parts when I was waking up from a sleep. I think that more public awareness would have helped. I would not have felt as totally alienated if I had had some support, some place to turn to without social stigma attached to making it public, including the family".
- *43 year-old planner.* When he was 16, he had been "approached in a public washroom by a homosexual" who fondled his penis. "I should have reported the incident to the police to prevent other assaults to persons".
- *42 year-old mother.* When she was nine, she was sexually fondled by three males aged 17, 30 and 30 years-old. They also attempted to insert their

penises in her anus. "I never told. If I had known, I could have told someone and not gotten into trouble for telling. And if I had been old enough to realize the persons doing those things needed help themselves to realize they had a problem".

- *23 year-old farm worker.* When he was 14, an older teenager had tried to force his penis into his anus. "This person was a macho guy, a body builder and not the sort one would suspect". Because "no harm was done", he didn't report the incident.
- *56 year-old mother.* When she was 13, her 46 year-old uncle tried to rape her. "I had no one to talk to and I did not understand. My parents had deceased. He threatened to throw me on the streets".
- *20 year-old student.* When he was 14, a neighbour who was a butcher "tried verbally to force me to submit to him". A friend and the school staff were told. "The school mentioned it to the police and to friends in the community".
- *30 year-old manager.* When she was 10, a 16 year-old second cousin attempted to rape her. "My cousin told me we were playing a game". She told no one about the incident.
- *48 year-old clergyman.* When he was 10 years-old, a 14 year-old boy forced his penis into his anus. He didn't tell anyone because "I didn't want to cause any trouble".
- *35 year-old writer.* When she was nine, her "genitals were touched under verbal disguise of something else at that age by a farm helper while I was on vacation. I don't really think I could have been helped, unless I had been made aware of sexual advances at that young age. At that time, you just weren't aware".

The principal reasons why most of these persons had not sought assistance underscore the nature of their fears and the stigma associated with having been a victim of a sexual offence. A recurring theme in some of these accounts is the sense of uncertainty about what constitutes acceptable or unacceptable sexual activities.

Reflecting changes in social values, sexual customs are in transition about which partner is expected to initiate sexual activities, about which types of acts are acceptable, and about the nature of the signals connoting agreement, feinted reluctance or refusal. These are not situations in which the terms of a contract are specified in advance. Many victims found themselves in situations in which they were frightened, embarrassed or ashamed. It is evident from these accounts that a sharp and absolute distinction must be taught to children concerning their involvement in sexual activities in which there is any element of authority, harassment, exploitation or force.

In relation to the reasons cited by victims why they did not seek assistance, it is evident that for most of them, their decisions had little, if anything, to do with the types of services available, but revolved around deeply-held personal concerns. In its research, the Committee found no firm evidence suggesting that a majority of victims did not turn to public services because they feared the staff of these programs. The findings suggest that what the victims feared

most was the disclosure of what had happened, particularly when this meant telling family members and close friends.

Summary

On the basis of the results obtained by the National Population Survey, it was found that:

1. About one in two females and one in three males had been victims of sexual offences.
2. Children and youths constitute a majority of the victims. About four in five of the victims were under age 21 when the offences were first committed against them. Fewer than one in five persons was victimized for the first time when he or she was an adult.
3. A high proportion of persons in all parts of the country reported having been victims of these offences.
4. On the basis of offences reported by adults of all ages, it appears that there has not been a sharp increase in recent years in the incidence of sexual offences.
5. A majority of sexually abused victims did not seek the assistance of public services, and when such help was sought, physicians and the police were the groups most frequently contacted.

Sexual offences are committed so frequently and against so many persons that there is an evident and urgent need to afford victims greater protection than that now being provided. The findings of the National Population Survey clearly show the compelling nature of the fears and stigma associated with having been a victim of a sexual offence.

Elsewhere in the Report, the Committee recommends changes in legislation intended to strengthen the legal protection and rights of children and youths who are victims of sexual offences. These recommended changes in legislation constitute an essential legal framework to afford better protection for children and youths. These measures, if taken by themselves, would be insufficient to contain this widespread problem.

What is required is the recognition by all Canadians that children and youths have the absolute right to be protected from these offences. To achieve this purpose, a major shift in the fundamental values of Canadians and in social policies by government must be realized.

The Committee is aware that these basic changes will not come about easily or quickly. If no action is taken, or if only token programs are initiated, the risk that children and youths will continue to be sexually abused will remain intolerably high. In this respect, one of the Committee's major recommendations, given in Chapter 3, is that the Office of the Commissioner which we recommend be established have as one of its principal responsibilities, in co-operation with the provinces and non-governmental agencies, the development, co-ordination and implementation of a continuing national program of public education and health promotion focussing on the prevention of sexual offences and the protection of young children, youths and adults who are victims.

Chapter 7

Dimensions of Sexual Assault

Drawing on the results of four national surveys, this chapter provides a summary of who the sexually assaulted child is and the circumstances involved in the assaults committed. The results given here pertain only to *sexual assaults* which, by definition, involved any type of sexual touching of the child by another person. The results on offences where there was no touching of the child are given in Chapter 8, *Acts of Exposure*. This separation of findings is made in light of the legal aspects of these offences and to preclude the listing of results which would be misleading were the findings for all types of sexual offences aggregated together.

Provincial child welfare statutes establish different age limits with respect to services and protection afforded to children. Information reflecting the operation of these statutes was collected in the national surveys in relation to the experience of children who were 16 years of age and older. The findings for youths between age 16 and under 21 years-old are reported in the review of sexual offences specifying either higher age limits or no age limits and these results are given in Chapter 24, *Police Investigation*, and Chapter 25, *Elements of the Offences*. In this chapter, in order to provide a common denominator as a basis upon which to review the experience of sexually assaulted children, *only findings for children age 15 or younger are considered.*

The personal accounts received by the Committee (Chapter 5, *Personal Accounts*) and the findings of the National Population Survey (Chapter 6, *Occurrence in the Population*) show that a majority of the victims of sexual offences either do not contact or are unknown to those public services whose responsibilities include the provision of assistance and protection for them. When victims seek help, they typically turn to only one of two or three services, most often to physicians or hospitals, the police, and less frequently to social services, including child protection agencies. As a result, the experience of sexually assaulted children known to these services only partially reflects the dimensions of the actual occurrence of these offences committed against children and youths. The offences reported to these services or identified by their professional staff constitute, however, victims for whom assistance can be provided, and upon whose behalf, legal action can be taken. In this respect, the

public services cannot respond to the needs of victims which are not reported, or which are not identified by the work of their professional staff.

Reflecting differences in the types of offences committed, the identities of assailants, where the incidents occurred, the decisions made by victims and their families, and the nature of the mandate of each public service, there is a selective winnowing of the types of victims known to physicians, the police and child protection workers. In undertaking its research, the Committee was afforded the unusual opportunity to obtain extensive information about sexually abused children and youths from each of these public services.

When it started its review, the Committee found that there was insufficient documentation available about the types of public services and voluntary community agencies to which victims may turn for assistance. On the basis of its review of research and its meetings with officials and the professional staff of programs, the Committee focussed its research attention on the documentation of the experience of victims known to public services having an official mandate with respect to these problems. As a result, the Committee undertook national surveys involving police forces, hospitals and child protection services. In this regard, the findings of the National Population Survey confirm that these services are those which are most frequently turned to by victims of sexual offences.

Benefitting from the considerable co-operation extended by these public services across Canada, the Committee assembled information from each of these three principal sources of assistance to victims. An unusual aspect of the findings obtained is that a comparison can be made between them in relation to the circumstances of the victims, the types of sexual offences committed and the actions officially taken. The detailed findings obtained in these surveys are subsequently presented in the Report. In this chapter, an overview is given of the main dimensions of sexual assaults against children and youths.

In undertaking the national surveys, the Committee sought, where it proved to be feasible, to obtain uniformly comparable types of information. This purpose was not fully realized, since the collection of findings was partially contingent upon the completeness of the information available in records or case files and upon the methods used by different services to identify and classify reported sexual offences. In addition, because the needs of the victims served differ and the types of services provided vary, each public service selectively specializes in somewhat different types of assessments and in the provision of different forms of assistance.

Sex of Victims

Sharply different findings have been reported in the research on sexual offences about the proportion of girls and boys who are victims. Although the reported estimates have ranged from between three in five and nine in 10 victims being girls, the latter is the most widely cited ratio. Some reports, such as

that of the Metropolitan Toronto Chairman's *Special Committee on Child Abuse* (1982) have concluded that virtually all victims are girls. "Since the overwhelming number of child sexual abusers are male (97 per cent) and their victims female (90 per cent), we have chosen to refer to female victims and male offenders in this report."[1] At the other end of the scale, the Metropolitan Toronto Board of Commissioners of Police's *Task Force on Public Violence Against Women and Children* (1983) found that three in five victims were girls.[2]

One of the most comprehensive and widely known reports, the 1957 British study on *Sexual Offences*, found that of sexual assaults reported to the police, about two in three (67.8 per cent) were committed against girls and one in three was against boys (32.2 per cent).[3] When acts of exposure committed against girls are added to the number of sexual assaults against children of both sexes, then about three in four (74.0 per cent) of all of the sexual offences reported in the 1957 British report had been committed against girls and in one in four incidents (26.0 per cent), boys were victims.

The findings drawn upon here from the Committee's national surveys with respect to the gender ratios of victims refer only to *sexually assaulted* children who were under age 16. Since the experience of older children and acts of exposure are excluded, these findings differ somewhat from those cited elsewhere in the Report.

National Surveys	Sexually Assaulted Victims Under Age 16	
	Males	Females
	Per Cent	Per Cent
National Population Survey		
(i) touched	30.8	69.2
(ii) attempted assault/assault	23.8	76.2
(iii) average of (i) and (ii)	28.2	71.8
Police Force	22.3	77.7
Hospital	13.7	86.3
Child Protection	14.4	85.6

In the National Population Survey, about three in four persons who had been sexually assaulted for the first time as children were females (71.8 per cent) and about one in four (28.2 per cent) was a male. When these results are compared to the gender ratios of the sexually assaulted children known to public services, it is apparent that a higher proportion of girls than that of boys was known to these agencies. The closest approximation to the National Population Survey's gender ratio occurs in cases investigated by police forces. In the instance of both the National Hospital Survey and the National Child Protection Survey, the proportion of sexually assaulted girls was approximately a fifth higher than that in the National Population Survey.

The proportion of girls to boys who were the victims of sexual assaults documented in the four national surveys is somewhat lower than the most commonly cited estimate of nine in 10 victims being girls. On the basis of the findings of the National Population Survey, **it appears that about three in four victims are girls and that one in four is a boy.** The results of the national surveys show that different gender ratios of victims are known to the public services with these findings having social policy implications with respect to the scope and types of services provided to victims. While the central thrust of public concern has often focussed on the plight of young female victims, the results indicate that services providing assistance and protection for young male victims are also warranted.

Age Distribution

The summary national statistics about the age and sex of sexually assaulted children tell us little about the anguish and fear they experience as victims. The statistics do, however, clearly indicate that **a large number of victims were very young children and that there are sharp differences proportionately by age between how many children are victims and how many are known to public services.**

Age	Female Victims			
	National Population Survey	National Police Force Survey	National Hospital Survey	National Child Protection Survey
	Per Cent	Per Cent	Per Ceat	Per Cent
Under age 7	9.2	17.9	27.1	22.0
7 –11 years	29.4	29.1	34.9	39.9
12–13 years	24.8	20.7	15.9	21.6
14–15 years	36.6	32.3	22.1	16.5
TOTAL	100.0	100.0	100.0	100.0

Depending upon which public service had been contacted, between twice and three times the proportion of very young female victims were reported as that of females in the National Population Survey who were sexually assaulted when they were under age seven. In comparison with the findings of the National Population Survey, a disproportionate number of sexually assaulted patients treated at hospitals was younger girls while the proportion of older girls known to the police and child protection services more closely approximates the age distribution found in the National Population Survey.

In the National Population Survey, of males who had been sexually assaulted when they had been younger than 16 years-old, about one in eight at the time (11.9 per cent) had been a boy under age seven. In contrast, male victims in this age group were about two and a half times as likely to be known to

Age	Male Victims			
	National Population Survey	National Police Force Survey	National Hospital Survey	National Child Protection Survey
	Per Cent	Per Cent	Per Cent	Per Cent
Under age 7	11.9	29.0	28.3	38.0
7 –11 years	27.1	38.5	46.3	32.0
12–13 years	25.4	14.2	20.9	18.0
14–15 years	35.6	18.3	4.5	12.0
TOTAL	100.0	100.0	100.0	100.0

public services. While on the basis of the findings of the National Population Survey, it appears that the proportion of sexually assaulted males increases with age, the reverse trend is true in relation to the proportion of older male victims known to the police, hospitals and child protection services. The findings suggest that in addition to a victim's sex, his or her age appears to influence whether the public services are contacted for assistance.

Time of Occurrence

Because many sexual assaults had been committed sometime well before public services had been notified, information about exactly when the incidents had occurred was either missing or incompletely recorded in the files and charts drawn upon in two of the national surveys and this type of information was not obtained in the National Population Survey. In this regard, only the findings obtained in the National Police Force Survey are presented.

Because of the effects of inclement weather and the times of the year when children are at school, it is not surprising that a large number of sexual offences against children reported to the police occur during the daylight hours and the spring and summer months. The largest number of sexual assaults reported to the police occurred during the spring and summer. The seasonal distribution of the offences was about the same for male and female victims.

Seasons	Per Cent Males	Per Cent Females
Spring	31.1	27.6
Summer	32.4	34.6
Autumn	18.5	22.9
Winter	18.0	14.9

In the National Police Force Survey, of the occurrences for which the time of the incident was given (69.5 per cent), over half (56.9 per cent) had

occurred during the hours of daylight. About two-thirds (65.6 per cent) of the assaults against boys in comparison to slightly over half (55.2 per cent) of those against girls were committed during the morning and afternoon. Over a quarter of all assaults took place during the evening between 6 p.m. and 10 p.m. One in nine boys and one in six girls reported that the offences had occurred between 10 p.m. and 5 a.m.

Time of Day	Per Cent Males	Per Cent Females
Morning (5 a.m. — 12 p.m.)	12.0	12.2
Afternoon (12 p.m. — 6 p.m.)	53.6	43.0
Evening (6 p.m. — 10 p.m.)	23.0	28.9
Night (10 p.m. — 5 a.m.)	11.4	15.9

There was a relatively uniform distribution between the day-of-the-week on which the sexual assaults were reported to have occurred.

Days of Week	Per Cent Males	Per Cent Females
Sunday	12.2	13.2
Monday	14.8	12.8
Tuesday	14.3	14.4
Wednesday	15.0	14.2
Thursday	9.4	13.5
Friday	13.9	15.6
Saturday	20.4	16.3

For both male and female victims, there was a modest peaking in the reporting to the police of sexual assaults which had occurred on Saturday.

Where the Offences Occurred

In the pretest of the research protocol for the National Police Force Survey, a large number of locations was identified where the offences had occurred. Rather than introducing a distinction between private and public places at the stage of collecting this information, a full listing of all types of locations was established. In the Committee's analysis, a *private place* was operationally defined to include the following locations.

1. House of the victim
2. Apartment of the victim
3. House of the suspect

4. Apartment of the suspect
5. House of the third party:
   (i) neighbour
   (ii) friend
   (iii) parents (living with the victim)
   (iv) relatives
   (v) employer
   (vi) acquaintance
   (vii) babysitter
   (viii) youth worker
   (ix) other
6. Apartment of a third party (categories i-ix, as listed under number 5)
7. Miscellaneous private places:
   (i) hotel or motel room
   (ii) cottage
   (iii) trailer
   (iv) shed or garage
   (v) abandoned house

All other locations where the sexual assaults occurred were defined as public places, and to permit a comparison with the results of the 1957 British study on *Sexual Offences*, its classification of public places was adopted.[4] A review of the legal significance of public and private places is given in Chapter 25, *Elements of the Offences*.

The "street-proofing" of children which would entail teaching them to be cautious in their encounters with strangers has been proposed by some observers as a means of reducing the occurrence of sexual assaults against young victims. In relation to these proposals, the most significant finding documented in Table 7.1 concerning **the location of sexual assaults committed against children is that well over half (55.4 per cent) occurred in the homes of victims or suspects.** These are places which are usually considered to be safe and which are not open to scrutiny by the public. The public places where the assaults were committed were potentially accessible to all persons. Among the large number of public places where both sexes were about equally at risk of being assaulted were open spaces, amusement centres, vehicles and a number of buildings accessible to the public. Girls were about twice as likely as boys to be attacked on the street, while boys were twice as likely as girls to be attacked in a number of 'other' places (e.g., beaches, construction sites, parking lots, summer camps).

The findings of the National Police Force Survey contrast with those of the 1957 British study which also drew on police records. In the British survey, only a fifth (18.4 per cent) of the sexual assaults against children were committed in the homes of the victims or suspects. In comparison to the Canadian experience, the British study found: over twice as many offences occurring in open spaces; seven times more in public conveniences; 10 times more in places of amusement; and considerably more in a variety of public buildings. The dif-

Table 7.1

Location of Assaults

Location	Males		Females		Total	
	Number	Per Cent	Number	Per Cent	Number	Per Cent
Open Spaces						
Parks, wooded areas, vacant lots	106	15.2	338	14.1	444	14.3
Streets						
Laneways, bus stops, bridges, subway stations	39	5.6	265	11.0	304	9.8
Houses						
Homes of victims	120	17.2	698	29.0	818	26.4
Homes of suspects	217	31.1	468	19.5	685	22.1
Homes of third parties	31	4.4	116	4.8	147	4.7
Other private locations	13	1.9	55	2.3	68	2.2
Public Conveniences	16	2.3	8	0.3	24	0.8
Theatres						
Billiard halls, arcades, movie houses	6	0.9	20	0.8	26	0.8
Other Buildings						
Apartment corridors, church halls, corner stores, elevators, libraries, museums, restaurants, shopping malls	68	9.7	230	9.6	298	9.6
Vehicles						
Buses, cars, school buses, subways, taxis	36	5.2	119	4.9	155	5.0
Other Places						
Beaches, bridges, construction sites, day care centres, gas station, homes for disturbed children, hospitals, parking lots, places of work, summer camps, YMCA	46	6.5	88	3.7	134	4.3
TOTAL	698	100.0	2405	100.0	3103	100.0

National Police Force Survey. Children under 16 years.

ferences between the findings of the two studies may be attributable to the wide span of time between them, the different climates of the two nations, or may reflect that different customs and circumstances were involved in committing these types of offences (e.g., inviting persons into homes, the relative accessibility of private places).

In each of the three national surveys of sexually assaulted children and youths known to public services, information was sought with respect to whether the victim and assailant lived in the same household. Since not all suspects related to victims lived in the same household, this classification differs from the listing of the type of association (e.g., family, acquaintance, stranger) between victims and assailants.

National Survey	Victim and Suspect Living in Same Household	
	Males	Females
	Per Cent	Per Cent
Police Force	9.7	20.8
Hospital	27.0	42.1
Child Protection	41.7	53.3

In each survey, it was found that proportionately more girls than boys who were victims had been living in the same households with their reported assailants.

The early research on the occurrence of crime concluded that proportionately more of the poor than the affluent had crimes committed against them and that they in turn committed a disproportionate number of all offences. These conclusions have been rejected as creating a harsh and negative stereotype about the criminality of the poor. Because there is an inverse and selective reporting of crime along class lines and because much of the work of the helping services is geared to assist the poor, some observers assert it is spurious to conclude that the poor experience more of these problems than other persons.

These issues raise a number of significant ethical and factual considerations. Inherent in the collection of information about criminal offences is the dilemma of the propriety of identifying certain types of social differences. Where this is done in the analysis of certain types of offences, the results obtained may serve to engender and fuel prejudices about certain groups. At the level of the factual documentation of cultural and class differences which may influence the distribution of crime, there appears to be little in the way of firm information available for Canada. These items are not routinely collected or included in official statistics.

Most of the studies focussing on sexual offences either have ignored these issues or have dealt with them cursorily. Among the few studies which have obtained such information, it has variously been concluded that either no dis-

tinctions occur along class and cultural lines, or that the members of certain minority groups, many of whom are poor, are at a greater risk of being sexually assaulted than persons in other walks of life. In one component of its research, the Committee obtained information about whether persons lived or did not live in government subsidized housing, a finding which provides a partial measure of the level of family income. Prior to carrying out the National Police Force Survey, a draft research protocol was pretested using the general occurrence records of the Metropolitan Toronto Police Force. During this pretest, a full listing was made of the addresses of: the children reported to have been sexually assaulted; the suspected offenders, when such information was known; and the places where the offences were reported to have occurred. The addresses were compared to the listings of all types of government subsidized housing in Metropolitan Toronto (federal, provincial and municipal).

For the three years between 1979-81, the total number of sexual assaults reported to the Metropolitan Toronto Police Force was 790 cases (189, boys; 601, girls).

Type of Residence	Sex of Victims			
	Males		Females	
	Number	Per Cent	Number	Per Cent
Victim lived in public housing	63	33.3	283	47.1
Suspect lived in public housing	42	22.2	202	33.6
Offence occurred in public housing	45	23.8	203	33.8

- *Children Living in Public Housing*. Of the total of 790 sexual assaults, 43.0 per cent of the children lived in public housing. One third of the boys (33.3 per cent) and almost half of the girls (47.1 per cent) lived in these locations.
- *Suspects/Offenders Living in Public Housing*. Of the incidents where the addresses of the assailants were known, a fifth (22.2 per cent) of the assaults against boys and a third (33.6 per cent) against girls had been committed by persons living in public housing.
- *Location of Offences*. About a third (31.4 per cent) of all sexual assaults committed against children reported to the police in Metropolitan Toronto either took place in the buildings or the vicinity of government subsidized housing. About a quarter of the assaults against boys (23.8 per cent) and a third of those against girls (33.8 per cent) occurred in these locations.

Because considerable time was required to match the addresses of each victim and suspect with the listings of government subsidized housing, it was not feasible to replicate this component undertaken in the pretesting of the draft research protocol in the full national survey. The trends noted for Metropolitan Toronto, however, warrant further research investigation.

These findings cannot be extrapolated to provide an indication of what may happen elsewhere in Canada nor do they confirm that there is an association between poverty and the occurrence of sexual offences. They accord, however, with the conclusions of the Kinsey report on *Sexual Behaviour in the Human Female*. In that study of 4441 American females, it was concluded that:

> Approaches had occurred most frequently in poorer city communities where the population was densely crowded in tenement districts . . . we would have found higher incidences of pre-adolescent contacts with adults, if we had had more cases from lower educational groups.[5]

The results of the in-depth review of the locations of sexual offences against children and youths reported to the police and occurring in Metropolitan Toronto between 1979 and 1981 show that for persons who committed sexual offences, public housing units appear to constitute an easily visible target where a large number of children live in the same location. To the extent that a comparable degree of visibility may occur in other locations where many children live and may be readily accessible, special attention in this regard may be warranted in programs of education to inform children and their families about the risks of unwanted sexual approaches and about what to do when these occur.

Types of Sexual Acts

An assortment of definitions of child sexual abuse and sexual offences against children has been used in research reports, official crime statistics, the medical classification of diagnoses and provincial child welfare legislation. None of these typologies, some of which are widely used as the basis for the reporting of statistics on child sexual abuse, identifies the full range of specific types of sexual acts which may be committed against children. Because each system classifies the information obtained differently, a direct comparison of the findings obtained from these sources is effectively precluded.

Some research studies, for instance, have focussed on only one sexual act, such as rape or the catch-all category of pedophilia, while others, under the heading of sexual assault, have grouped together all offences, including acts of exposure. In some instances, terms having precise legal meanings have been operationally redefined. Rape, for example, has been broadened in some studies to include all acts of oral, anal and vaginal penetration and the legal meaning of incest has been extended to incorporate all types of sexual acts committed against the child by all family members whether they are blood relatives or persons unrelated to the child living in the same household. Furthermore, it has been a common practice in the research and the official statistics of public services to group together either broad categories or all types of sexual acts without regard to their behavioural distinctions or their legal significance.

In developing its classification of the different types of sexual contacts between persons, the Committee sought to ground this listing on the full range

of sexual acts which actually may occur. In this regard, the Committee drew upon: the types of sexual acts specified in the sexual offences in the *Criminal Code*; the general research literature on sexual behaviour and offences; and a review of the sexual offences against children reported for a year to the Metropolitan Toronto Police Force. The listing derived from these sources was reviewed to ensure that all sexual acts prohibited by the *Criminal Code* were separately identified and that separate categories were established for each of the most commonly occurring acts. The revised classification was used in each of the national surveys conducted by the Committee.

The inclusion of the classification of sexual acts in the National Population Survey served two purposes, the first being to provide an estimate of the occurrence in the population of unwanted sexual acts, and the second being to establish a baseline with which to compare the findings obtained in the national surveys of public services. The classification of unwanted sexual acts is divided into two broad categories distinguishing between acts of exposure, or actions involving no touching of the person, and sexual assaults, or acts involving any type of sexual touching of the person. The latter category for which findings are given here includes contacts between persons ranging from the touching, fondling and kissing of the parts of the body to oral, anal and vaginal penetration by a penis, finger or object. (The findings on acts of exposure are given in Chapter 8).

The detailed specification of types of unwanted sexual acts obtained in the National Population Survey provides a basis for estimating their occurrence in the population. The results indicate that a sizeable proportion of Canadians, involving over three times more females than males, has experienced at least once, different acts of sexual molestation entailing the touching, fondling or kissing of breasts, buttocks or genital parts of the body. The unwanted licking or sucking of a person's vagina, penis or anus has occurred at least once to two in 100 females (2.1 per cent) and three in 100 males (3.1 per cent).

In relation to the occurrence of more serious sexual assaults, the findings of the National Population Survey show that about four in 100 (3.8 per cent) females had at least once been raped, i.e., had an unwanted vaginal penetration by a penis. The survey's findings indicate that about two in 100 persons (2.1 per cent) of both sexes have either experienced at least once an unwanted anal penetration with a penis, attempts to commit these acts or anal penetration by means of objects or fingers.

A summary of the most commonly occurring unwanted sexual acts documented in the four national surveys undertaken by the Committee is given in Table 7.2. Elsewhere in the Report, more detailed findings are given with respect to victims who experienced these acts and their care and management by the police, hospitals and child protection services.

With the exception of young female patients treated at hospitals, a high proportion of young females in each of the other surveys was known to have been sexually molested (i.e., acts involving touching, fondling). A higher pro-

Table 7.2

Types of Sexual Acts Committed

Type of Sexual Contact	National Surveys							
	Population		Police Force		Hospital		Child Protection	
	Males	Females	Males	Females	Males	Females	Males	Females
	Per Cent	Per Cent	Per Cent	Per Cent	Per Cent	Per Cent	Per Cent	Per Cent
Fondling/touching breasts, buttocks	3.7	32.9	11.0	43.5	4.1	8.9	10.8	33.9
Fondling/touching genital area	12.1	14.5	60.1	48.1	31.1	35.9	30.0	34.7
Kissing mouth, other parts of body	0.3	3.0	9.9	14.8	5.4	4.0	7.5	13.5
Oral-Genital	2.6	1.6	29.7	6.7	20.2	11.8	10.0	6.9
Oral-Anal	0.5	0.5	1.5	0.8	6.8	2.2	0.8	0.4
Attempted vaginal penetration with penis	0.0	5.9	0.0	6.5	0.0	17.9	0.0	9.9
Vaginal penetration with penis	0.0	3.8	0.0	17.6	0.0	31.0	0.0	19.6
Vaginal penetration with finger	0.0	5.2	0.0	7.0	0.0	13.3	0.0	9.6
Vaginal penetration with object	0.0		0.0	0.6	0.0	2.2	0.0	0.9
Attempted anal penetration with penis	1.0	1.3	4.4	1.3	10.8	2.6	4.2	0.8
Anal penetration with penis	0.6	0.3	8.2	0.6	28.4	3.6	16.7	1.8
Anal penetration with finger	0.5	0.3	2.0	0.5	6.8	0.9	2.5	0.1
Anal penetration with object			1.3	0.2	1.4	0.4	0.8	0.1
Bestiality	0.0	0.0	0.0	0.1	0.0	0.0	0.0	0.0

Non-accumulative listing of unwanted sexual contacts, for children under age 16.

portion of medically examined girls, about one in seven, was reported to have been a victim of oral-genital and oral-anal acts than that of girls known to the police or child protection services (about one in 13 respectively). A similar trend occurred with respect to acts of vaginal penetration or attempted vaginal penetration. About a third of the girls under age 16 who were medically examined at hospitals had been raped or some other type of vaginal penetration had been attempted. In contrast, one in six girls investigated by the police and one in five known to child protection workers were reported to have been raped.

Somewhat similar trends to those involving the experience of girls were found with respect to the reporting of unwanted sexual acts against boys under age 16. A higher proportion of sexually assaulted boys known to the police (about one in three) and to a lesser extent to hospitals (about one in four) had been victims of oral-genital and oral-anal acts than that of boys known to child protection services (about one in nine).

Where there is mutual consent between partners, many of the sexual acts documented in the national surveys fall within the normal range of sexual behaviour engaged in during childhood or adolescence. The general research on human sexual behaviour suggests that there is typically a progression with age and experience from acts involving a sexual touching and fondling to intercourse and oral-genital contacts. While in some instances, the substance of an act involving particular types of partners constitutes a criminal offence (e.g., incest), in other cases, it is more the attendant social circumstances that sets them apart as offences and establishes a gradient from minor to serious crimes. With respect to sexual assaults committed against children and youths, the findings given here and in Chapter 6, *Occurrence in the Population*, indicate that:

1. **A sizeable number of Canadian females, and to a lesser extent, males, are victims of unwanted sexual acts.**

2. **These unwanted sexual acts encompass a wide range of sexual behaviours, one broader than may be commonly realized.**

3. **Most of the unwanted sexual acts committed against children and youths documented in the national surveys were not reported to family members and friends, and in only a small proportion of these cases were the public services notified.**

4. **The types of unwanted sexual acts committed become known or are reported on a selective basis to different public services.**

These findings constitute a forceful reminder that the proportions and types of unwanted sexual acts reported by particular public services or community agencies are likely to vary considerably from each other, and that each such source of information only partially reflects the actual occurrence of these acts which are committed against children, youths and adults in the population.

Threats and Use of Force

Since a clearcut distinction was not always made in the records drawn upon in the three national surveys of public services about how the sexual assaults had been committed, the findings given here pertain to elements which were more clearly and consistently identified by attending professional workers. These elements were where victims had been threatened or where assailants had used some type of physical force before or during an assault.

Assaults where threats had been used included those where the child had been told that he or she would suffer reprisals, blackmail or physical assault. Initially, four sub-categories were developed to distinguish contacts where physical force had been used. The "physical coercion" of a victim involved the use of force by a suspect, for instance, incidents where a child had been physically held down. The category of a "direct assault" of a victim by a suspect included any other type of sexual touching ranging from grabbing a girl's breast to the forced insertion of a penis in a child's mouth. The use of weapons was divided into instances where suspects "threatened" to use a knife, a gun or another object, and those where they were known to have actually "brandished" a weapon either before or during an assault. In the analysis of sexual assaults, these several acts were aggregated into a single category of a victim having been "physically forced" by an assailant. In the remainder of the sexual assaults where neither threats nor physical force were reported, the incidents may have involved: the consent of the child; the use of gifts; and persuasion or seduction by assailants.

The results of the three national surveys of public services indicate that, on average, three in five sexually assaulted children under age 16 had either been threatened or physically coerced by assailants.

Action Taken by Assailant	Victim Threatened and Physically Coerced					
	National Police Force Survey		National Hospital Survey		National Child Protection Survey	
	Males	Females	Males	Females	Males	Females
	Per Cent	Per Cent	Per Cent	Per Cent	Per Cent	Per Cent
Victim threatened	6.0	2.8	16.2	21.1	20.0	21.6
Victim physically coerced	55.8	58.2	27.0	33.0	26.7	28.9
Victim neither threatened nor coerced	38.2	39.0	56.8	45.9	53.3	49.5

In the National Police Force Survey, approximately three in five sexually assaulted children known to the police had been intimidated or physically forced by their assailants to engage in sexual acts. In contrast, for about half of

the victims examined at hospitals or known to child protection workers, neither of these actions was reported to have occurred. The findings suggest that when threats or physical force are used in sexual assaults against children, proportionately more of these victims and their families may seek police assistance than those contacting other public services. The threat to use a weapon, or the actual brandishing of a weapon before or during an assault, occurred in about two per cent of all assaults and knives were used in over three-quarters of these incidents. The other weapons used to threaten children included: guns; baseball bats or metal rods; leather belts for bondage or whipping children; wire clothes hangers; and scissors or a screwdriver to stab victims.

Overall, the results of the three national surveys indicate that a sizeable number of sexually assaulted children had been threatened or physically assaulted before or during these incidents. Only about one in 16 (6.4 per cent) victims was reported to have voluntarily agreed or consented to the sexual acts. In the remainder of the incidents, the children had been persuaded, bribed or seduced. The findings clearly show that few of the assaults can be deemed casual or harmless contacts and that most were accomplished against the will of the child.

Physical Injuries and Emotional Harms

Sharply contrasting estimates have been reported about the extent and types of injuries experienced by victims of sexual assaults. These estimates vary from less than one per cent to over half of the victims having been severely harmed by assailants.

The 1953 Kinsey report on *Sexual Behavior in the Human Female* rejected as a "myth fostering hysteria" the conclusion that an appreciable number of female children was injured by the sexual advances of adult males. In the study of 4441 females, 1075 of whom when they were children had had sexual contacts with adults, the 1953 Kinsey report found that while over 80 per cent had been emotionally upset or frightened, only a few said that they had been physically injured.

> The exceedingly small number of cases in which physical harm is ever done to the child is to be measured by the fact that among the 4441 females on whom we have data, we have only one clearcut case of serious injury done to the child and a very few instances of vaginal bleeding which, however, did not appear to do any appreciable damage.[6]

The 1957 British study of victims of sexual offences found that the majority had experienced no physical injuries. This conclusion was based on the finding that most of these incidents had involved minor offences and that, in some instances, children had consented to the sexual acts. Of the 179 physically injured victims in the British study, 58 became pregnant, 32 had suffered severe injuries or had contracted venereal disease and 68 had been cut or bruised. The British study concluded:

> The effects of sexual offences must be assessed more by the results they may have on the moral and emotional development of the victims than on the

basis of the physical injury sustained. There is very little information and considerable difference of opinion concerning the moral and emotional effects of sexual misbehaviour on young children.[7]

The estimates in Canadian research of the extent of the physical injuries resulting from sexual assaults range from: 30 per cent of sexually assaulted children (1975-76 survey by Le Comité de la protection de la jeunesse);[8] 48.4 per cent of the victims 16 years and older (1979 Vancouver victimization survey);[9] 52 per cent of rape victims (1978-79 Winnipeg Sexual Assault Survey);[10] and 58.5 per cent of 147 sexually assaulted persons (1979-80 Ontario Rape Crisis Centre Survey).[11] These divergent findings may be partially accounted for by the fact that: different definitions of what constitutes an injury have been used and, on occasion, there has been no specification of the types of injuries sustained; the experience of victims known only to special services and community agencies has been reported; there has seldom been medical confirmation of injuries to victims; and most of the research reports have focussed on the experience of adult female victims, not that of children and persons of both sexes.

In the national surveys, where it was feasible in light of the information available, findings were obtained about physical injuries and emotional harms sustained by sexually assaulted children and youths. In the National Population Survey, persons who had been sexually assaulted at least once were asked if they had been physically injured or emotionally harmed by the first such incident which had happened to them. Specific types of physical injuries were itemized and victims were also asked if they had been emotionally or psychologically harmed to specify the nature of these harms. The results on injuries resulting from sexual assaults obtained in the National Population Survey are significant because they constitute reports given directly by victims. While on the basis of these self-reports it cannot be assumed that persons who did not indicate that they had not been injured had not in fact been harmed, it is likely, particularly in light of the fact that intensely personal information was volunteered about sexual assaults, that the harms sustained may have been minor, or of a short duration, or may not have been identified (e.g., sexually transmitted disease).

In the National Police Force Survey, the general occurrence files listed: children reported to have been physically injured; children specifically reported not to have been physically injured; and cases where no information was given about injuries. Where physical injuries were not reported in police records, it is a reasonable assumption that none of an externally visible nature was known by the police to have been sustained or that none had been reported by victims. This omission, however, does not mean that children for whom no injuries were reported had not been physically hurt since certain symptoms may only become known later or be identified as a result of a medical examination. For these reasons, information on injuries given in police records likely constitutes an underestimate of the extent of physical injuries resulting from sexual assaults. Police records do not usually list information with respect to emotional and psychological harms incurred by victims.

On the basis of the medical examination of victims, detailed findings on physical injuries and emotional harms were obtained in the National Hospital Survey. These findings are given in Chapter 31, *Injuries Sustained*. In the development of the research protocol for the National Child Protection Survey, it was found that this type of information was not routinely documented in case records since some children had been previously medically examined, were referred for a clinical assessment, or the assaults had occurred sometime in the past. In this survey, detailed information was obtained about the social, behavioural and psychological problems of sexually assaulted children (Chapter 28, *Provision of Child Protection Services)*.

Although the nature of the information obtained on injuries in the three national surveys differs with respect to its completeness and classification, several consistent trends emerge from the findings.

1. Both male and female victims of sexual assaults were physically injured and emotionally harmed.
2. Proportionately, more female than male victims of sexual assaults were physically injured.
3. Where information is available, proportionately more emotional harms than physical injuries were sustained by victims.

Harms Sustained	Physically Injured and Emotionally Harmed Victims					
	National Population Survey		National Police Force Survey		National Hospital Survey	
	Males	Females	Males	Females	Males	Females
	Per Cent	Per Cent	Per Cent	Per Cent	Per Cent	Per Cent
Physically injured	3.9	19.9	6.1	13.8	10.8	24.8
Emotionally/ psychologically harmed	6.8	24.0	—	—	54.0	48.8
Long-term emotional/ psychological harms	—	—	—	—	18.9	17.6

In the National Population Survey, the results pertain to the first sexual assaults experienced by victims with most of these incidents occurring when the persons contacted in the survey had been children and youths. Of female victims, one in five (19.9 per cent) had been physically injured and one in four (24.0 per cent) had been emotionally harmed. Substantially fewer male than female victims reported injuries with only one in 25 (3.9 per cent) having suffered a physical injury, most commonly an irritated or infected penis or anus. One in 15 (6.8 per cent) males had been emotionally harmed.

In the national survey of police records, no information on physical injuries was reported for over half (54.8 per cent) of the children. For a third (33.2 per cent) of the cases, no physical injuries were reported. Of all physically injured children (12.1 per cent) for whom information was obtained in the National Police Force Survey, over twice the proportion of girls (13.8 per cent) than that of boys (6.1 per cent) had been physically injured. Most of the physically injured children had sustained more than one type of physical harm. Twice as many girls (31.5 per cent) as boys (16.7 per cent) had been bruised or scratched on the non-sexual parts of their bodies. Two-thirds (67.1 per cent) of the injured girls had received vaginal injuries, such as bruising, tearing, redness, irritation, a vaginal discharge or a broken hymen. In contrast to injured boys, of whom two-fifths (42.9 per cent) had had anal injuries, only 6.3 per cent of girls had experienced this type of injury. About a third of injured boys (33.3 per cent) and girls (28.9 per cent) reported other physical harms including 13 girls under age 16 who had become pregnant.

In the National Hospital Survey, about one in four girls (24.8 per cent) and one in nine boys (10.8 per cent) were found to have been physically injured. In each instance, these proportions were higher than those documented in the National Population Survey. On the basis of the mental health assessment of these children, half (49.4 per cent) were found to have suffered one or more emotional and behavioural harms resulting from sexual abuse. Further, in the judgment of attending health workers, about one in six children (17.8 per cent) was diagnosed as potentially sustaining a long-term emotional or behavioural harm attributable to sexual abuse.

The results of the three national surveys drawing upon the experience of well over 7000 sexually assaulted children and youths show that a larger proportion of victims suffered emotional harms than that sustaining physical injuries. As noted elsewhere, however, relatively few of the victims immediately sought treatment or counsel.

Sex of Assailants

In recent years, there has been a growing public awareness and recognition in Canada of the rights and needs of gay or homosexual persons. Various estimates, none known to the Committee to have been substantiated by comprehensive documentation, have been made of the proportion of gay persons in the Canadian population. In the National Population Survey, each person was asked "How old were you when you first had a sexual relationship?" Immediately preceding this question, a definition was provided that "by a sexual relationship, we mean having intercourse or sex — in or out of marriage — with someone of the other sex or of the same sex". The definition identified intercourse, either vaginal or anal, as the main element constituting a 'sexual relationship'; the additional specification of having had 'sex' was intended to include sexual behaviour occurring only between females. In the pretest survey, it was found that this question appeared to be clearly understood.

In the National Population Survey, of persons age 18 and older, 78.0 per cent of females and 86.2 per cent of males reported having had "intercourse or sex" at least once. With respect to the first time that a sexual experience of this kind had occurred, the persons contacted were also asked how old they had been at the time and the age and sex of their partner.

Of males and females having had "intercourse or sex", 95.8 per cent said that their first such relationship had been with members of the opposite sex. About one in 24 persons (4.2 percent) said that their first act of "intercourse or sex" had been a homosexual relationship with the proportions for males (4.1 per cent) and females (4.3 per cent) being about the same in this regard.

The results of the National Population Survey do not provide a measure which permits an estimate to be made about the proportion of gay persons in relation to all persons contacted in the representative sample of Canadians. The findings do, however, indicate that the first time one in 24 sexually experienced persons had had "intercourse or sex", the relationship had been a homosexual one and that when this relationship had first occurred, most of these persons had been children or youths.

In Chapter 12, *The Sexual Offences*, a legal review is given of the sexual offences for which the insertion of a penis in an anus is an element of an offence. An exception is specified with respect to acts of this kind, if both male partners are 21 years-old or older, if both consent to the act, and if these acts are performed in private.

Of the 4.1 per cent of males whose first sexual relationship had involved the insertion of a penis in an anus, the age of their partner was not reported in about one in six cases. Of the remainder for whom this information was available, only one in seven (13.8 per cent) had involved persons, both of whom at the time had been age 21 years-old or older. In six in seven (86.2 per cent) of the reported acts of this kind, either one or both males were under 21 years-old.

In the Kinsey report on *Sexual Behaviour in the Human Male*, it was found that the average age when the first homosexual contact had occurred was at about age nine.[12] In the National Population Survey, the age range was between 10 and 20 years-old. Over seven in 10 of the males (72.0 per cent) had been under age 18 when they had first been involved in these sexual acts.

Of the six in seven males who had been under age 21 when they had first experienced anal penetration with a penis, the ages of their male partners were:

Males	Per Cent
Partner age 21 years or older	28.0
Partner same age	32.0
Partner younger	8.0
Partner less than three years older	16.0
Partner more than three years older but under age 21	16.0

Based on a representative national sample of the Canadian population, the findings suggest that a majority of first sexual acts between males involving the insertion of a penis in an anus are situations where:

1. One partner is typically under age 21 (86.2 per cent) and of this group, seven in 10 (72.0 per cent) had been under age 18.
2. Over two in five (44.0 per cent) of the under 21 year-old males' partners were more than three years older or were adults when the acts occurred.

In addition to the Committee's findings on heterosexual and homosexual behaviour obtained in the National Population Survey, its findings from the other national surveys confirm the generally held belief that most sexual assaults against children and youths are predominantly committed by males. When findings about the sex of the assailants are aggregated from the national surveys, 98.8 per cent of the suspected offenders were males and 1.2 per cent were females. In the surveys, the gender ratio between male and female assailants varied sharply with the proportion of female assailants being respectively: 1.8 per cent, National Police Force Survey; 2.8 per cent, National Population Survey; and 10.0 per cent, National Child Protection Survey. These differences are likely accounted for by different types of sexual assaults becoming known to the police, hospitals and child protection services.

When the sex of the victims and the assailants are considered in relation to whether the assaults entailed heterosexual or homosexual acts, the aggregated results of the three national surveys of public services indicate that four in five offences (80.9 per cent) were heterosexual and one in five (19.1 per cent) was homosexual. Predictably, virtually all sexual offences (99.2 per cent) against female victims were committed by males, and although the proportion of female assailants was higher when boys (3.1 per cent) than when girls (0.8 per cent) were victims, most of the boys and male youths were sexually assaulted by males.

Type of Association

In developing its classification of the types of affinity and position of trust relationships, the Committee drew up its listing on the basis of the categories established by the sexual offences in the *Criminal Code*. This listing also included other types of association occurring between victims and assailants. In this summary, the eight categories of association do not indicate that certain proscribed sexual acts specified by *Criminal Code* sexual offences had actually been committed. In the instance of the "incest relationship", for example, while this criminal offence specifies blood relatives who are prohibited from having intercourse with each other, this category is used here to include persons having an incest-type blood relationship to the child who in fact may have committed a number of different sexual acts, none of which was intercourse. The analysis of the type of association and the sexual acts committed is given in Chapter 25, *Elements of the Offences*.

The categories of association between victims and suspected offenders used were:

1. *Incest Relationship.* Blood relatives to the child who were: father, mother, brother, half-brother, sister, half-sister, grandfather and grandmother. (The offence of incest also specifies the blood relationships of child and grandchild, categories which were inapplicable in this analysis.)

2. *Other Blood Relative.* Blood relatives to the child who were: uncle, aunt, nephew, niece and cousin.

3. *Guardianship Position.* As specified in Section 153 of the *Criminal Code*, males whose relationship to a female under age 21 was that of: step-father, foster-father and legal guardian. Included in this category is employer or work supervisor to a female employee under 21.

4. *Other Family Members.* Family members not having a blood relationship to the child who were: adoptive father, adoptive mother, step-mother, foster mother, adoptive brother, foster-brother, adoptive sister, foster-sister, adoptive grandfather, adoptive grandmother, common law (father, mother, brother, sister), in-laws, step-uncle, step-aunt, among others.

5. *Persons in Positions of Trust.* Persons in positions of authority or trust with respect to the child, including: teachers, daycare workers, doctors, babysitters, social workers, school bus drivers, school crossing guards, Big Brother/Big Sister youth workers, minister/priest/rabbi, camp counsellor, dentist, etc.

6. *Friends/Acquaintances.* Persons known to the child who were: boyfriends, girlfriends, personal friends, family friends, acquaintances, neighbours.

7. *Other Persons.* A miscellaneous listing of other persons not included in other categories, all of whom were known or could be identified by victims.

8. *Strangers.* Persons whose identities were unknown to victims, or were not recollected by them.

With one exception, in each of four national surveys, a full listing was obtained of the specific types of association between victims and suspected assailants. The exception involved the National Population Survey where only a few persons in positions of trust were identified with the remainder being aggregated into the "other" category.

The findings of the four surveys show that, in general, the types of association reported in the National Population Survey and the National Police Force Survey are approximately similar, but that both differ substantially from those reported in the National Hospital Survey and the National Child Protection Survey. In the first two surveys, between a fifth and a quarter of the suspected assailants were family members, about a third to a half were friends or acquaintances, and most of the remainder were strangers. In contrast, about half of the assailants of children examined at hospitals and slightly less than nine in 10 suspected offenders of victims known to child protection workers were family members. About one in five patients examined at hospitals had been sexually assaulted by friends or acquaintances and the proportion of vic-

tims falling in this category known to child protection services was about one in 14. In the latter public service, only one per cent of the assailants were reported to have been strangers to children.

Table 7.3

Type of Association Between Sexually Assaulted Victims and Suspected Assailants

Type of Association Between Victim and Suspected Assailant	National Surveys			
	National Population Survey	National Police Force Survey	National Hospital Survey	National Child Protection Survey
	Per Cent	Per Cent	Per Cent	Per Cent
Incest relationship	9.9	9.1	23.7	45.8
Other blood relative	8.4	4.2	7.8	4.5
Guardianship position	3.0	4.4	5.6	16.9
Other family member	2.5	3.1	9.8	19.2
Position of trust	1.0	5.3	5.8	2.8
Friend/acquaintance	48.0	36.3	21.5	7.0
Other person (known)	9.4	1.7	8.0	2.8
Stranger	17.8	35.9	17.8	1.0
TOTAL	100.0	100.0	100.0	100.0

The results of the national surveys confirm trends already noted that the types of sexually assaulted children and youths known to the public services differ significantly. When only the types of association between victims and suspected assailants are considered, the incidents known to the police more closely approximate the experience of persons in the National Population Survey who reported first unwanted sexual acts. An expected difference, however, is that proportionately more cases involving strangers were reported to the police than those who were in this category in the other surveys. In comparison to the population and police surveys, a substantially larger proportion of children and youths who had been sexually assaulted by family members was cared for at hospitals or by child protection workers. In this regard, these services were dealing with a less representative group of sexually assaulted young victims.

Considering the ages of the children, it is not surprising that there were few instances of assaults committed by employers or co-workers. For certain types of crime such as theft or robbery, an obstacle that may hinder effective police work is the lack of information about the identity of the perpetrator. In the 1957 British study on *Sexual Offences*, it was noted that:

> . . . where an association existed between the victims and offenders prior to the offences, the chances of the offenders being detected were much

greater. It is therefore not surprising to find that more than 4 in 10 of the 990 victims, involved in cases in which the offenders were convicted, knew them prior to the offences.[13]

Of the sexual assaults committed against children documented in the national surveys, the identities of a majority of the assailants were known. The proportions of children sexually assaulted by strangers were: 17.8 per cent (National Population Survey); 35.9 per cent (National Police Force Survey); 17.8 per cent (National Hospital Survey); and 1.0 per cent (National Child Protection Survey). **The results clearly show that the main need of sexually assaulted children is for adequate protection from persons whom they already know and may trust.**

Assaults by Groups

The majority of the sexual assaults against children are committed by one assailant whether these assaults are single episodes or are committed periodically or continuously over a period of time. Less is known about instances where victims may have been attacked on several occasions by different assailants or where victims are simultaneously assaulted by several persons. Based largely on the experience of adults, the research suggests that group assaults are usually planned ahead of time, that more violence and coercion are involved and that the victims of these incidents are often physically injured.

The 1957 British report on *Sexual Offences* found that most of the sexual offences committed by groups were indecent assaults against girls. The estimates for Canada about the proportion of women attacked by two or more assailants range from 14.1 per cent to over half of all sexual assaults which are committed. Beyond a number of case studies, there is no documentation concerning the experience of children and youths who have been victims of group assaults.

A total of 343 incidents involving children having been sexually assaulted by two or more persons was documented in the three national surveys of cases reported to public services. Girls were victims in nine in 10 (89.5 per cent) group attacks; of all types of sexual assaults committed against girls, one in 11 (9.0 per cent) involved two or more assailants. While there were only 36 instances reported in the three surveys of boys having been sexually assaulted by two or more assailants, the findings confirm that acts of this kind do in fact occur. Boys were victims of one in 10 (10.5 per cent) sexual assaults by groups; of all sexual assaults committed against boys, about one in 22 (4.5 per cent) had involved two or more assailants.

The proportion of cases involving more than one assailant was generally similar in each of the three national surveys. Of the 326 group sexual assaults for which the number of assailants was specified, the distribution was: two assailants (58.0 per cent); three assailants (20.6 per cent); four assailants (14.7 per cent); five assailants (3.7 per cent); six assailants (1.5 per cent); and eight assailants (1.5 per cent).

Because the records of the police were more complete and detailed than those drawn upon in the other surveys, the findings of the National Police Force Survey serve as the basis for reviewing the ages of victims and assailants involved in incidents of this kind. The 189 victims of group sexual assaults documented in police general occurrence records had been assaulted by 413 assailants. Regardless of the ages of victims, there was no marked variation with respect to the average age of their assailants which was 18.9 years-old.

Age of Victims of Group Sexual Assaults	Average Age of Assailants
Under age 7	18.6 years
7-11 years	18.1 years
12-13 years	18.4 years
14-15 years	19.8 years

On average, a majority of the assailants committing group assaults were adolescent males with there being only a slight and predictable increase in the ages of assailants who had attacked victims between ages 14 and 15. On the basis of the findings of the National Police Force Survey, three types of group sexual assaults can be distinguished. These categories are: assaults committed by male adolescents; assaults committed by adults; and assaults committed by both adolescents and adults.

Slightly over three in five (62.4 per cent) group sexual assaults were committed by groups of male adolescents. About one in five (18.0 per cent) group sexual assaults had involved only adult assailants, and about one in 12 (8.5 per cent) had been committed by a combination of at least one adolescent and one adult. Of the remainder, the age of one or more of the assailants was unknown.

Proportionately, the youngest group of victims, children under age seven, was at the greatest risk of being attacked by two or more adults. One third (33.3 per cent) of group sexual attacks against children under seven were committed by adults, some of whom were seven or eight times older than their victims. Group sexual assaults committed by adults constituted one in five (19.1 per cent) of the attacks against victims between ages seven and 11, about one in nine against victims between ages 12 and 13 (10.7 per cent) and about one in five (19.7 per cent) against victims between ages 14 and 15.

In the infrequently occurring group sexual assaults committed jointly by adolescents and adults, the age pairings of some of the assailants were: 14 and 26; 13 and 44; 17 and 30; and 15 and 31. Little is known about the circumstances involved in these unusual types of group sexual assaults, about the mental capabilities of the persons involved, or about who may have incited whom to assault the child. Although incidents of this kind occur, the findings show that the greatest risk to young female victims in these types of attacks is from gangs of predatory and dangerous adolescent males.

Table 7.4

Group Sexual Assaults by Ages of Suspected Offenders

Ages of Victims of Group Sexual Assaults	Ages of Suspected Assailants				
	Adolescents (Under Age 21) (n = 118)	Adults (Age 21 and Older) (n = 34)	Adolescents And Adults (n = 16)	Age Unknown for One or More Assailants (n = 21)	Total (n = 189)
	Per Cent	Per Cent	Per Cent	Per Cent	Per Cent
Under age 7	53.3	33.3	—	13.3	99.9*
7-11 years	69.1	19.1	7.1	4.7	100.0
12-13 years	64.3	10.7	8.9	16.1	100.0
14-15 years	59.2	19.7	10.5	10.5	99.9*
TOTAL	62.4	18.0	8.5	11.1	100.0

National Police Force Survey.

* rounding error

Alcohol and Drugs

Dating back at least to the assembling of crime statistics before the turn of the century when such information was documented in Canada, it has been a widely held belief that the use of alcohol, and more recently of drugs, is closely associated with the occurrence of certain types of crimes, particularly offences committed against the person. In order to document the validity of this belief, information on the use of these substances by victims and assailants was collected in each of the three national surveys of cases reported.

In light of the absence of specific and accurate information in these surveys, it was not feasible to document how much alcohol or how many drugs had been used, but only to learn whether it was reported that these substances were known to have been used by victims, by suspected assailants, or by both persons. In this regard, the information obtained does not constitute a measure of the actual extent to which victims or suspected assailants may have been using alcohol or drugs.

National Survey	Victims Using Alcohol/Drugs	
	Males	Females
	Per Cent	Per Cent
Police Force	4.3	4.8
Hospital	—	1.6
Child Protection	5.0	5.9
Average	4.0	4.6

In the three national surveys, on average, one in 25 boys and one in 21 girls were reported to have been using either alcohol or drugs when the assaults occurred. With the exception of sexually assaulted patients examined at hospitals, the findings were of the same order for assaults against children reported to the police and child protection services.

When these findings are compared to those of a 1982 national survey of children between 12 and 19 years-old, it appears that sexually assaulted children are no more likely to use alcohol and drugs than other Canadian children, and indeed, they may have used them somewhat less often.[14] The national survey undertaken by the Department of National Health and Welfare found that by age 10, a quarter of the youths who were between 12 and 19 years-old in 1982 had drunk alcohol. Six per cent of the children between ages 12 and 14 said that they had smoked marijuana; a quarter of the children in this age group had drunk alcohol at least once during the month prior to the survey.

For purposes of comparison, when only the results of the National Police Force Survey about the use of alcohol by victims of sexual assaults are considered, the findings are similar to those of the 1957 British report on *Sexual Offences*.[15] In the British study which obtained information only on the use of

alcohol, it was found that 4.5 per cent of the victims who were 15 years or younger had been drinking, a proportion which is slightly larger than the 4.1 per cent of the Canadian children for whom this information was reported in the National Police Force Survey.

In contrast to the relatively small number of victims reported to have been using alcohol or drugs when the sexual assaults were committed, on average, over twice as many boys and over three times as many girls were reported to have been assaulted by suspects under the influence of these substances. About one in six (15.7 per cent) of the girls and about one in 10 (9.7 per cent) of the boys were reported to have been sexually assaulted by a person who had been using either alcohol or drugs.

The proportion of suspected assailants reported to have been using these substances when they had assaulted children was comparable for incidents coming to the attention of the police and hospitals. In contrast, child protection workers reported a substantially higher proportion of suspected assailants to have been under the influence of alcohol or drugs. Almost a third of the girls (31.4 per cent) and a quarter of the boys (23.3 per cent) were documented as having been sexually attacked by a person using one or other of these substances. These findings suggest that either the types of sexual assaults coming to the attention of child protection services differ significantly in this respect from those known to the police or hospitals, or that child protection workers may more consistently seek to learn if these substances may have been used in their assessments of sexual assaults against children.

National Survey	Suspected Assailants Using Alcohol/Drugs	
	Male Victims	Female Victims
	Per Cent	Per Cent
Police Force	7.4	11.6
Hospital	6.8	10.6
Child Protection	23.3	31.4
Average	9.7	15.7

With the exception of the findings of the National Child Protection Survey, **the use of alcohol and drugs by assailants does not appear to have been a contributing factor in most of the reported sexual assaults committed against children and youths.**

Professionally Confirmed Assaults

The child or youth who tells another person about a sexual assault may be in a position of double jeopardy of being disbelieved on account of his or her age and on account of the stigma associated with sexual offences. The legal assumptions about the testimonial trustworthiness of sexually assaulted chil-

dren and youths are reviewed in Chapter 14, *Evidence of Children*. In this chapter, the findings of the three national surveys of public services are drawn upon in relation to whether professional workers assisting young victims believed or disbelieved their accounts of sexual assaults committed against them.

It has become commonplace in some of the research on sexual offences to describe the police investigation of these incidents as a harrowing experience. For these reasons, it has been concluded that "fewer women than formerly are willing to go to the police to lay charges against an assailant" and on occasion when this step is taken, "the police appear to believe that large numbers of women lie about sexual assault and must be prevented from pursuing their complaints."[16]

These reactions by the police are said to account for the fact that a large number of the complaints about sexual offences are classified as "unfounded" in police investigations. In a 1970 study of rapes reported to the Toronto police,[17] while 63.8 per cent were listed as "unfounded" in police records, the researchers concluded that about nine in 10 (89.7 per cent) had actually occurred. In the report on the experience of five Ontario Rape Crisis Centres, "an alarming increase" was noted "in charges of Public Mischief" being brought against the victim who reports a sexual assault and is not believed.[18]

Although each of the three main services most frequently turned to by sexually assaulted children uses a different vocabulary to describe the attending professional worker's assessment of whether an incident has occurred, the conclusions reached are comparable in relation to indicating whether the victim was believed or disbelieved. In the field of child welfare, a case is said to be "confirmed" if in the judgment of the attending child protection worker a child's account of an assault is believed and/or if there is firm evidence indicating the assault had been committed. Cases which are "not confirmed" are those where there may be insufficient supporting evidence or where a worker is uncertain whether the assault had actually been committed.

In medicine, several measures may be drawn upon as an indication of a physician's assessment of a patient's condition. These measures include: the patient's presenting complaint(s); the results of a physical examination and laboratory tests; a description given in a patient's chart of why he or she needed medical care; and a diagnosis listing a patient's cause of death, injuries or diseases.

As a means of safeguarding a victim's identity and on occasion to preclude such information later being used for legal purposes, the Committee learned in the course of undertaking the National Hospital Survey that some physicians were reluctant to use diagnoses specifying sexual assault or child sexual abuse. As noted in Chapter 32, *Medical Classification of Sexual Assault*, although most physicians had used diagnoses identifying sexual assault or abuse, a majority of these diagnoses are not recognized in the most widely used system of disease classification.

In police and crime statistics, an incident or "an occurrence" is considered to be "founded", if, as a result of an investigation, the evidence indicates that the offence had occurred. "Founded occurrences" include cases where charges are laid against a suspect as well as those instances where a suspect is not known or located, but where in the judgment of the police the evidence indicates that an offence had happened. In contrast, an "unfounded occurrence" is one where it appears in the judgment of the police that no offence occurred. By definition, there is invariably a shortfall between the number of "founded" occurrences reported and the number of charges subsequently laid. This difference is accounted for by the proportion of the cases where the suspects are not located but where it is concluded that the offences had occurred, and for other reasons, such as the parents of a child being reluctant to press charges or where the victims or the witnesses are unwilling to testify.

The findings of the three national surveys of public services show that while the police and physicians believed that virtually all of the sexual assaults against children reported to them had occurred, substantially fewer of the cases cared for by child protection workers were reported to have been "confirmed".

National Surveys	Proportion of Cases Reported as Confirmed/Founded		
	Male Victims	Female Victims	Total
	Per Cent	Per Cent	Per Cent
Police Force	95.5	93.6	94.0
Hospital			
(i) Presenting complaint	91.9	93.0	92.8
(ii) Frequency of assaults/child sexual abuse	91.9	92.3	92.3
Child Protection	68.9	43.1	45.5

Only 6.0 per cent of the sexual assaults against children under age 16 were classified as "unfounded" by the police, or were incidents where it was deemed that there was insufficient evidence to indicate the assaults had occurred. On the basis of the presenting complaints and the description given of the frequency of occurrence of sexual assault and child sexual abuse, it appears that physicians believed the vast majority of the accounts given by patients. The findings of these two surveys differ strikingly from those of the National Child Protection Survey where it was found that over half of the cases (54.5 per cent) of suspected child sexual abuse were "not confirmed" by attending workers.

In light of the statements sometimes made by observers that certain professional workers, most notably the police, may often disbelieve accounts given by sexually assaulted victims, **the Committee's findings clearly show that when children and youths are victims, their veracity is highly trusted by the police and physicians.** An unexpected finding is that concerning children

known to child protection workers, of whom over half were not initially believed, namely, their accounts were "not confirmed."

The findings of the three national surveys indicate that, in general, accounts given by boys are about equally or more often believed than those given by girls. With the exception of the results of the National Hospital Survey where there were no marked differences by the sex of the patients in this regard, the disparities in the other surveys were respectively 1.7 per cent of cases investigated by the police and 25.8 per cent of cases known to child protection workers. With the exception of the National Hospital Survey where the gender of the attending physician was noted, this type of information was not obtained in the other national surveys. On the basis of the Committee's contacts with public services across Canada, it appears that many police officers investigating sexual assault cases are males and that many child protection workers caring for sexually abused children are females. To the extent that these gender ratios are valid, then it may be the case that the gender of professional staff relative to that of victims may be a less significant factor contributing to the potential harassment of victims than the attitudes of professionals and the special training that they may have had. In this respect, it is notable that the highest proportion of "not confirmed" cases (56.9 per cent) involved girls known to child protection workers.

The findings of the National Police Force Survey contrast sharply with the reports about the experience of women who have been raped or sexually assaulted. Since no comprehensive national study for Canadian adults has been made along these lines, it is unknown whether these distinctions occur because adults may react differently than children to these offences, whether different types of acts are committed or whether different investigation practices for adults and children are used by the police. It may also be the case that the sources upon which the conclusions reached for adults about the large number of "unfounded" sexual offences are numerically too small and too unrepresentative of the full range of the sexual offences investigated by the police.

Charges Laid

The accuracy of the information obtained about whether police charges were laid against suspected assailants varied with the completeness of the records drawn upon in the national surveys of public services. For example, when physicians examine a sexually assaulted victim, they may not know whether charges are pending or have been laid, and as a result, this information may not be recorded in the patients' charts. Accordingly, the findings obtained in the three national surveys are based only on reports where it was indicated that charges had been laid.

Of sexual assaults known to the police and hospitals, proportionately more suspected assailants whose victims were boys than those whose victims were girls were reported to have been charged by the police. This trend was reversed

National Surveys	Charges Laid by Police Against Suspected Assailants		
	Male Victims	Female Victims	All Victims
	Per Cent	Per Cent	Per Cent
Police Force	46.1	40.9	41.6
Hospital	36.5	22.8	24.4
Child Protection	16.7	22.2	21.4

for cases known to child protection workers where one in five assailants (22.2 per cent) whose victims were girls and one in six whose victims were boys were reported to have been charged.

To the extent that the findings from the National Hospital and Child Protection surveys are valid concerning whether charges were laid, then it appears that this was about half as likely to have occurred involving cases known to these services than those where the police initially undertook the investigations. This difference, if valid, is even more striking when it is recalled that the identities of assailants were unknown in 35.9 per cent of cases investigated by the police, in 17.8 per cent of medically examined patients, and in one per cent of the children known to child protection workers.

While in comparison to the cases reported to the police and hospitals the identities of more suspected assailants were known by child protection workers and proportionately fewer of these suspects were reported to have been charged, the more usual means of intervention adopted was to seek a court hearing to obtain custody of the child. The findings of the national surveys highlight an issue considered in more detail in Chapter 29, *Intervention Strategies*, namely, that there are operationally different approaches taken with respect to seeking to assist and protect sexually assaulted children and youths.

Primary Sources of Assistance

The findings of the National Population Survey indicate that most victims of unwanted sexual acts had not sought assistance. Of those who had, the public agencies most frequently turned to were physicians, the police and social services. When the findings of the national surveys of public services are considered, it is evident that in each instance there were distinctively different patterns with respect to how sexually assaulted children and youths either had sought help or had become known to these services. On the basis of the average length of time taken to contact services and of whether most victims and their families had contacted or had been referred by other agencies to a particular helping service, a distinction along operational lines can be made *primary* and *secondary* contact services. Services constituting the former category are those which are promptly and directly turned to by sexually assaulted victims or by

those persons who are responsible for their protection and welfare. In the latter category, secondary contact services, while some victims and their families may immediately turn to these resources for assistance, the major part of their caseload is derived from referrals made either by other professional workers or by cases of sexual assault which have been identified in the course of providing previously initiated services.

The amount of time that passes between the occurrence of an assault and its notification to a public service has a direct bearing on the identification of certain types of physical injuries and whether these conditions are likely to be subsequently confirmed by means of a medical examination. Minor scratches and bruises, for instance, may heal quickly. If forensic evidence is to be obtained with respect to assaults involving intercourse, then a medical examination must be undertaken promptly, and for acts of this kind as well as for those involving anal penetration, a medical assessment is warranted with respect to the detection of whether a victim has contracted a sexually transmitted disease. The usual means by which sexually assaulted children and youths seek assistance or become known to public services and community associations is also a partial measure of the extent and type of co-operation and sharing that occur between the helping services with respect to providing assistance for victims.

While the concept of interdisciplinary professional and public service teamwork in responding to these problems has been widely recognized, there is little documentation for Canada of the extent to which interagency cooperation may occur in practice. In this regard, most of the available reports are unidimensional in the sense that typically only referrals made to a particular agency or service are reported. Drawing on this type of information, it has typically been concluded that certain public services have been remiss or derelict in fulfilling their responsibilities with respect to not having reported known cases of child sexual abuse to other agencies. What is often undocumented in reports of this kind is information about the extent to which there has been a two-way exchange of information.

The decisions taken by victims and their families about whether assistance should or should not be sought are affected by a number of considerations, including: the sexual acts committed; who the assailants were; the nature of the fears, injuries and trauma experienced by victims and the reactions of their families; the types of services actually provided by public agencies; and how these services may be perceived by persons in need of assistance. In this regard, not only the type of public service turned to by victims but as well the length of time taken to seek assistance from them are partial measures of their perceived utility and responsiveness in meeting the needs of victims. On the basis of the findings of the national surveys, a sharp gradient was documented in relation to the average lengths of time between when sexual assaults had been committed and when different types of public services had been contacted, notified or had become aware of the incidents.

Three in five sexually assaulted children contacting the police did so within 24 hours after the incidents occurred, about half of the patients treated at hospitals sought care within a day of having been assaulted, and of cases known to child protection workers, about one in five was identified within this time span. The police and hospitals were notified within a week of about three in four sexual assaults which were respectively investigated and medically examined. In contrast, only a third of the caseload of sexually assaulted children known to child protection services consisted of victims who had contacted these workers within a week of when the incidents had occurred, and for one in three of these cases, more than a year had elapsed.

Time Taken To Report	National Surveys					
	National Police Force Survey		National Hospital Survey		National Child Protection Survey	
	Males	Females	Males	Females	Males	Females
	Per Cent	Per Cent	Per Cent	Per Cent	Per Cent	Per Cent
Immediately	40.3	38.8	4.1	3.6	6.4	10.1
Within 24 hours	18.5	21.4	46.9	43.0	11.1	10.1
Within 1-3 days	8.6	7.3	6.1	11.8	7.9	5.2
Within 4-7 days	6.2	5.9	14.3	10.4	6.3	8.0
Within 1 month	9.9	8.5	8.2	12.3	14.3	11.6
Within 6 months	12.1	9.6	10.2	9.9	20.6	12.7
Within 12 months	3.3	2.9	6.1	2.7	6.3	5.2
Over 1 year	1.1	5.6	4.1	6.3	27.0	37.0
TOTAL	100.0	100.0	100.0	100.0	99.9*	99.9*

* rounding error

On average, there was no marked difference in relation to the lengths of time taken to seek assistance by boys and girls who were victims or by their families on their behalf. In this regard, it appears that it was not the gender of the victim, but the type of assistance sought which affected how much time passed before different public services had been notified. On average, most victims or their families notifying the police or hospitals had contacted these services within a week after the assaults had occurred. This finding suggests that of those victims contacting the police, these services were perceived by them to be accessible and to be an appropriate source of needed and immediate assistance. In contrast, the findings of the National Population Survey together with those of the National Child Protection Survey clearly show that other types of public agencies, including child protection services and many community agencies, were less often directly contacted by victims or their families. When these other types of services were contacted by victims, this usually occurred sometime after the assaults had been committed. Relatively few victims, for

instance, had contacted child protection services on a "walk-in" basis. Much of the caseload of sexually assaulted children cared for by these services was comprised of victims who had been assaulted over a period of time, or whose identities were already known because they or their families were receiving some other form of assistance.

The findings, summarized in Table 7.5, show that strikingly different referral pathways had been taken by victims, or their families on their behalf, in relation to how the three public services had typically been contacted. About four in five sexually assaulted children known to 28 police forces across Canada had either directly sought the assistance of the police, or these contacts had been made on their behalf by their families, friends or acquaintances. Most of these contacts with the police had been made by what may be called a "lay referral system", namely, victims or persons close to them had themselves initiated a request for assistance.

Table 7.5

Initial Referrals to Public Services

Principal Source of Referral	Public Services					
	Police		Hospital		Child Protection	
	Males	Females	Males	Females	Males	Females
	Per Cent	Per Cent	Per Cent	Per Cent	Per Cent	Per Cent
Victim and/or family member	83.0	77.5			24.2	26.8
Friends/ acquaintances	4.9	5.3	31.1	44.3	4.2	3.7
School staff	0.3	2.8	—	0.7	2.5	8.0
Physicians	0.1	0.6	8.1	6.0	—	2.5
Other health workers	0.2	0.3	4.0	5.3	5.0	4.2
Child protection/ social services	4.1	5.6	24.3	18.4	34.1	40.0
Police	2.1	0.9	32.4	24.4	10.0	10.5
Rape Crisis/Sexual Assault Centres	—	0.1	—	0.9	—	0.7
Other sources	5.3	6.9	—	—	20.0	3.6
TOTAL	100.0	100.0	99.9*	100.0	100.0	100.0

* rounding error

In contrast, proportionately fewer sexually assaulted patients examined at hospitals had sought medical care on a "walk-in" basis. About two in five patients or their families (42.6 per cent) had initiated these contacts with hos-

pitals. In comparison to contacts with the police or hospitals, proportionately fewer victims or their families had directly contacted child protection services. Less than a third of the sexually assaulted children and youths (30.5 per cent) known to these agencies had directly sought this type of assistance themselves.

Different lines of communication were found to exist between different public services and community agencies. Teachers and other school staff, for instance, were seldom reported to have referred cases to the police or hospitals, the services most commonly turned to directly by victims. However, one in 12 (8.0 per cent) female victims known to child protection services had been referred by school personnel. In light of the proportion of sexually assaulted victims seeking medical care whose experience was documented in the National Population Survey, few referrals made by physicians, even to hospitals, were reported in the national surveys of public services.

Only one in 17 girls (6.0 per cent) and one in 12 boys (8.1 per cent) treated at hospitals had been referred by physicians. In the three national surveys, a total of 73 referrals to public services had been made by physicians. Overall, other types of health workers were just about as likely as physicians to make referrals to the police, hospitals and child protection services.

Of cases of child sexual abuse referred to police forces, one in 18 (5.6 per cent) involving girls and one in 24 (4.1 per cent) involving boys had been initiated by child protection services. Between one in four (24.3 per cent, boys) and one in five (18.4 per cent, girls) patients examined at hospitals had been referred by child protection workers. Of cases known to child protection services, a third of the boys (34.1 per cent) and two in five of the girls (40.0 per cent) had been referred by other social services or had become known as a result of ongoing casework. Overall, a quarter of cases (26.7 per cent) involving boys and a third (34.3 per cent) involving girls were cases which were already open or for whom other types of assistance were being provided.

Only a small proportion of the cases of child sexual abuse reported to the police involved referrals from other police forces. When this happened, these referrals were usually made by federal and/or provincial forces to municipal forces, or by military to civilian forces. A third of sexually assaulted girls (32.4 per cent) examined at hospitals had been referred by the police. One in 10 referrals for victims of both sexes known to child protection workers had been initiated by the police.

Summary

When the findings concerning the lengths of time taken by victims to notify public services and the patterns of interagency referrals are considered with those concerning the types of association between victims and assailants and the nature of the sexual acts committed, it is evident that three distinctive groupings of sexually assaulted children and youths are served respectively by the police, hospitals, and child protection services and other community agen-

cies. The group of victims known to the police constitutes the broadest cross-section in relation to the types of first sexual assaults reported by persons in the nationally representative sample of the Canadian population. Most of the cases investigated by the police had been initiated by victims or by their families and friends, and most of these contacts had been made relatively soon after the assaults had been committed.

The findings of the National Population Survey indicate that when sexually assaulted victims had sought medical care, they had turned to hospitals and physicians in community practice with equal frequency. No information was directly obtained about the patients treated by community physicians, although their reported referrals to various public services were documented. Of the sexually assaulted patients whose experience was documented in the National Hospital Survey, a majority had sought care relatively promptly, and in comparison with the proportional distribution of sexual acts known to the police and child protection services, more medically examined patients had been victims of acts of vaginal and anal penetration, or of attempts made to commit these kinds of sexual acts. The two main sources of referrals of victims to hospitals consisted of those which they or their families had initiated, or of those made by public services and professional workers.

In comparison to how victims became known to the police or hospitals, most of the contacts by sexually assaulted children known to child protection workers had been initiated by what may be termed a 'professional referral system'. A majority of these victims had been assaulted by family members or relatives and a sizeable proportion of the incidents had occurred weeks, or even months, before they became known to child protection workers.

In the Committee's view, the complex problems and risks experienced by sexually assaulted children and youths require the effective investigation, care and protection afforded by several of the helping professions, notably the police, physicians and child protection workers. The help afforded these young victims optimally involves sensitive and caring attention provided by as few persons as possible whose efforts are strongly complemented by other requisite services to ensure the best possible treatment and protection for the child.

The general findings of the Report consistently underscore the need for a more comprehensive and integrated approach to the care and protection of sexually assaulted children and youths. Elsewhere in the Report, a number of co-operative interdisciplinary and/or interagency programs are described which have been established in different regions of Canada in order to provide assistance and protection for victims of sexual assault. On the basis of the Committee's research findings, it is evident that little is known about which of these different types of programs most effectively benefit and protect sexually assaulted children.

In this regard, the findings presented in this chapter strongly support the Committee's recommendations about the need for more complete documentation about the operation and effectiveness of existing interdisciplinary and/or

interagency programs, for the education of professional workers and for informing the public about the availability of different services.

The significance for social policy of these findings is that if better protection is to be afforded children and youths who are victims of sexual assault, the Committee believes that this purpose is more likely to be achieved by a realignment and strengthening of those public services which are the most frequently turned to and trusted than by the extension of infrequently used services or the establishment of new programs.

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Chapter 8

Acts of Exposure

In contrast with other sexual offences, acts of exposure do not involve physical contact between an offender and a victim. In the study of sexual offences, the term, "exhibitionism", is typically defined as a means of obtaining sexual gratification involving the exposure by a male of his naked body and/or genitalia to a female. In most clinical studies, it is concluded that exhibitionists do not intend to touch or sexually molest their victims. When acts of exposure are committed, there is usually some distance between the offender and his victim(s). The exposure of the genitalia may be partial or complete and the act may also involve masturbation. Part of the gratification that offenders are believed to seek derives from the reactions of their victims which may range from annoyance and surprise to shock and fear.

Section 169 of the *Criminal Code* provides that it is a criminal offence wilfully to commit an indecent act in a public place in the presence of one or more persons, or in any place with intent to insult or offend any person. In section 138 of the *Criminal Code*, a "public place" is expressed as including any place to which the public has access as of right or by invitation, express or implied. Where, for example, a male person in a public place exposes his genitals to unsuspecting passers-by, the section 169(a) charge is made out. Where the same act occurs in a place other than a public place (hereinafter referred to as a "private place"), however, the defendant's intent to insult or offend any person must be proved. The offence of indecent act is thus concerned to regulate both acts of a publicly offensive nature, regardless of the individual's intent and acts, wherever committed, where the individual intended to insult or offend any person.

A number of different sexual acts and situations can be dealt with under the section of the *Criminal Code* which proscribes the committing of indecent acts. Accordingly, the listing of the offence of indecent act in police and crime statistics is not a useful source by itself in documenting this type of sexual act. What is required is the specific identification of the acts committed. Some of the elements of an indecent act, as set out in the *Criminal Code*, are that these acts are committed "in a public place in the presence of one or more persons," or "with the intent thereby to insult or offend any persons". No definition is given in this section of the *Criminal Code* of the exact nature of the type of act

which may insult or offend another person. In this regard, the current criminal offence under which acts of genital exposure are typically charged (section 169 of the *Criminal Code*) applies to very different sorts of behaviour, for example, running naked down a city street as a prank ("streaking") or baring one's buttocks as a prank ("mooning" or more forcibly, "chucking a moon"). Under the terms of this section, such acts may be committed by members of either sex and victims may be males or females.

The offence of "gross indecency" in section 157 of the *Criminal Code* may also give rise to a public place/private place legal controversy. Although the location of the act is not an element of this offence, where both parties are over 21 and the consensual act occurs in private, this is a complete defence for both accused. Since the "private" nature of the consensual act is only relevant where both parties are 21 or older, it has no relevance to consensual acts in private involving a young person (i.e., a person 20 or younger). Accordingly, no special analysis is provided in this regard for occurrences of "gross indecency".

In medical research, the definition of "exhibitionism" which is widely adopted rules out situations where an exposure occurs as part of other activities, such as swimming in the nude, undressing immediately before consensual sexual activity or as a prelude to a sexual assault. Where an exposure precedes a sexual assault, it is usually subsumed within the more serious sexual offence. The medical definition of exhibitionism specifies that only males commit these acts and that victims are exclusively females. Acts of exposure by males to male victims are excluded, by definition, and may be considered pedophilic acts undertaken to have physical sexual contact with a male child or youth. The clinical definition also excludes acts where parts of the nude body other than genitalia are exposed.

A distinction can be made between acts of exposure where an offender actively seeks out victims, and those where an offender exposes his genitalia or masturbates and is observed by another person. In the former type of act, an exposer deliberately seeks out victims, while in the latter instance, a victim happens to observe an offender standing naked at a window or exposing his genitalia while lying in a park.

In order to avoid confusion with respect to terms previously assigned special meanings, such as indecent acts and exhibitionism, the term "exposure" is used in this Report to denote the display of a nude body and/or genitalia to another person.

In its research, the Committee found that acts of exposure constituted a sizeable proportion of all sexual crimes committed against children and youths. Two types of situations were reported which fell outside of the clinical definition of exhibitionism. These incidents included: a few cases of exposure to boys; and a number of separate acts of exposure which preceded a sexual assault against the child.

In the cases of exposures to boys, there was no reported physical contact between offenders and victims. For this reason, it would have been inappropriate to group these acts in the analysis of sexual assaults against children, as while it may have been the intention of these exposers to touch or sexually molest male victims, no physical contact was made. Incidents of this type are usually considered to be part of the sequence of sexual behaviour that comprises homosexual pedophilia, and from this perspective, they would be set aside as not being true cases of exhibitionism. In this context, one study on exhibitionism noted "the limited usefulness of legal and criminological statistics as indicators of clinical entities, since clinically the term exhibitionism only applies to males."[1]

The Committee's findings indicate that acts of exposure to boys do in fact occur and that, for whatever reasons, they are not followed by an assault. The occurrence of these acts cannot be ignored merely because they do not conform to a particular definition. Rather than attempting to presume what the intentions of these exposers might have been, findings about these incidents are presented with the review of acts of exposure to girls.

The medical definition of exhibitionism that is commonly used specifies no bodily contact occurs between an offender and a victim. In one report, for instance, this act is defined as "the expressed impulse to expose the male genital organ to an unsuspecting female as a final sexual gratification", and it is further noted that "exposure is the final act and *not* a prelude to other acts".[2] When acts of this kind are committed, the assumption is that there is usually some distance between offenders and victims.

In the Committee's research, a number of instances were reported where an act of exposure was subsequently followed by an attempt to touch or assault a child. In reviewing these incidents, it was apparent that two discrete acts had been committed. Incidents involving undressing or exposure by an offender as a prelude to an assault were excluded from this group of offences. Incidents of this kind are reported in Chapter 9 *(Exposure Followed by Assault)*.

Because substantially more cases of acts of exposure were documented in the population and police force surveys than in those of hospital and child protection services, the Committee's main findings on these acts are taken from the first two national surveys, and particularly from the National Police Force Survey where the most detailed findings were available. These two national surveys provide information on the experience of a representative sample of Canadians and of the public agency to which many of these incidents are reported. The Committee's findings on acts of exposure differ from the sources of information drawn upon in a number of other reports of this offence in relation to: documenting directly the experience of children and youths who have been victims; the use of a uniform definition in the national surveys about specific sexual acts committed; and the number of cases for which information was assembled. As there appears to have been relatively little research dealing directly with the experience of children who have been exposed to, the findings in this chapter, where appropriate, are compared with the results of four main

studies on these offences, two of which were undertaken in Canada. These studies are:

1. *1956-59 Toronto Forensic Clinic Study*. A total of 54 exhibitionists referred by courts between 1956-59 to the Forensic Clinic of the Toronto Psychiatric Hospital;[3]

2. *1957 British Study of Sexual Offences*. Part of a larger English study of sexual offences, this definitive report assembled information on 786 cases of indecent exposures brought before courts, 389 of which had girls under 16 years of age as victims;[4]

3. *1961-62 Toronto Police Force Study*. Part of a larger review of sexual offences, a total of 125 cases of persons charged with having committed indecent acts by the Toronto Police Force were studied, of which 87 were exhibitionistic acts.[5] The ages of 70 victims of these acts were reported, of whom 36 were 14 years-old or younger; and

4. *1965 U.S. Study of Convicted Sex Offenders*. One of a series of reports from the Institute for Sex Research established by A.C. Kinsey, a comprehensive analysis of convicted sexual offenders, of whom 288 were exhibitionists.[6] Of this number, 49 males had exposed to girls 15 years-old or younger.

None of these studies obtained information directly from victims themselves. In each instance, such information was derived from official records or had been reported by the offenders.

Case Studies

The case studies of acts of exposure to children taken from the National Population Survey and the National Police Force Survey illustrate the types of situations in which these offences are committed.

- *Nine year-old girl*. While walking down a street, this girl was called over to the suspect's car parked at the curb. He asked if she wanted a sausage with cream on it. The suspect then raised himself and exposed his penis.

- *11 year-old girl*. As she was walking along a path, she saw a male jogger wearing shorts who was running towards her. He stopped abruptly in front of her, pulled down his shorts and exposed his penis. He asked if she had ever seen a penis. The girl fled.

- *Eight year-old boy*. While walking home from school, this boy cut through a laneway where a small car was parked. The driver called the boy and then exposed his penis. The boy ran.

- *12 year-old girl and friend*. As these children were walking along a street, they were approached by a man who stopped in front of them. He unzipped his trousers, exposed his penis, masturbated and moved closer to them. The girls asked if he was having "fun". He replied "yes", and then he fled.

- *33 year-old printing shipper*. When she was three, her godfather who worked for a hydro company exposed to her. Later, when she was 22, she wrote: "I did tell my husband. He phoned the police, but no action was

taken. There are a lot of us women. If nothing was done years ago, it sure won't change now. It is always the woman's fault, no matter what she looks like."

- *14 year-old girl.* This teenager was sitting in a bus shelter when a man entered. After pacing up and down, he opened his trousers, pulled out his penis, pointed it at her and said "do you want to play with it?" The girl fled.

- *11 year-old boy.* While he was fishing by a stream in a ravine, a stranger approached, pulled down his trousers, and exposed his penis. He asked the boy "do you like it?" The boy told him "to get lost" and then he fled.

- *Group of boys and girls, ages 4-6.* The children were playing in the yard of a daycare centre when the suspect, a male, jumped over the fence. He was nude. Although he was laughing, the children said he was trying to scare them. The attendant chased him away.

- *Nine year-old girl.* As this girl was returning home to the apartment building where she lived, she saw a man lounging by the front door. He mumbled something she didn't hear, so she stopped. He asked her if she would like to earn $10 by helping him move an air conditioner. As he was saying this, he lowered his trousers and exposed his penis.

- *29 year-old collection officer.* When she was nine, she was exposed to by a stranger; a week later she told her mother. "This has also happened to another member of my family. The police said these people have to be caught in the act to press charges".

- *15 year-old girl and two friends.* These teenagers were sitting on a park bench when they were approached by a 20 year-old male. He stopped in front of them and exposed his penis. The girls told him "to beat it". He didn't and continued to expose himself. He left after a few minutes.

- *46 year-old car inspector.* When he was 15, his girlfriend exposed herself. "The girl wanted me to make love to her, but I never did."

- *13 year-old girl and friends.* These children were about to enter a variety store when they heard a yell from a person in the alley beside the store. When the girl looked around the corner, she saw a man exposing himself and smiling at her.

- *Nine year-old boy.* While this boy was playing in the corridor of the apartment building where he lived, a man entered the corridor with his penis exposed. The boy ran.

- *Seven year old girl and a friend.* These children were walking along the street when the suspect approached them. When he opened his raincoat, they saw that his trousers were tied around his thighs and that his penis was exposed.

- *13 year-old boy.* Upon entering the elevator in the apartment building where he lived, this boy found a man was already in it. When the doors closed, the man pulled down his trousers and exposed himself. The boy pushed the button for the nearest floor, and when the doors opened, fled.

- *13 year-old girl.* On her way home from school, a car slowed down and stopped beside her. The driver asked for directions. When she leaned into the car, she saw that he was masturbating.

- *Eight year-old girl.* When she was playing in a park with friends, this child saw a man sitting on a bench. As she walked past him, he raised the paper from his lap and exposed his penis.

In these accounts, victims engaged in routine daily activities were typically taken by surprise. These young victims had been usually approached by a stranger who either did not speak to them, or if a conversation occurred, the questions initially asked dealt with innocuous issues. Once the attention of the child or youth had been attracted, the offenders, almost invariably older males, exposed their genitalia. There were few instances reported in the national surveys of exposers who were completely nude. In about one in 10 cases, the offender both exposed his penis and masturbated. The case studies show that acts of exposure are made to both boys and girls and to groups of children. There is no indication in these accounts that, in incidents where boys were victims, there was a confusion about the identity of the boys' sex on the part of exposers.

In most cases where children had been victims, the offenders had deliberately approached them or actively sought to attract their attention. It is evident from the case studies that exposers frequented places, usually streets or parks, where children were likely to pass by or congregate. While the children were taken off-guard by the unexpected nature of these incidents, most of them immediately fled. In a few instances, the children made fun of, or disparaged, offenders, and a few were likely too young at the time to realize the meaning of what had happened. The case reports also show, a finding confirmed by the results of the national surveys, that children of all ages may be victims of acts of exposure, with some being very young children.

Extent of Occurrence

Each person contacted in the National Population Survey was asked, "Has anyone ever exposed the sex parts of their body to you when you didn't want this?" Persons replying affirmatively were further asked how old they had been when acts of this kind had first happened to them and to specify which parts of the offender's body had been exposed, including: penis, woman's crotch, breasts, buttocks, nude body and "other–specify".

The results of the National Population Survey summarized in Chapter 6 indicate that about one in seven persons (14.3 per cent) had been a victim of at least one act of exposure during his or her lifetime and that females (19.7 per cent) were twice as likely as males (8.9 per cent) to have been victims. If the findings of this nationally representative sample are prorated as a basis for estimating the occurrence of acts of exposure against all Canadians, then several million persons may have been victims of these kinds of acts.

Sex of Victims

It has been consistently reported in the research on acts of exposure that only females are victims and that none is subsequently sexually assaulted. An inherent assumption underlying this research is that the intent of an exposer is known when such an act is committed. In incidents where a female is the victim, it is assumed that the act is the final sexual gratification for the offender and that he has no intent of subsequently committing an assault. Conversely, in incidents where males may be victims, the assumption is made that such acts are a prelude to an intended or actual touching or assault.

When an act of exposure occurs, it is unclear from available research reports: how often the acts involve only exposure; how often they are followed by an assault; or how often this sequence may be interrupted by the reactions of victims or detection by other persons. Since each of these situations happens, their subsequent classification as acts of exhibitionism, homosexual pedophilia or other types of offences involves a retrospective assumption about the intentions of offenders which are often unknown since many exposers are not apprehended.

An anomaly in this research is that it deals almost exclusively with the experience of female victims. There is no similar body of research which documents acts of exposure committed by offenders against males, whether these acts involve only exposures, or whether they are a prelude to a touching or assault. When such findings have been reported, they have been discounted as errors of classification. Until information is available on all types of acts of exposure, it cannot be assumed *a priori* that: only females and no males are the victims of acts of exposure; when these acts are committed against females, no subsequent sexual assault is intended or committed; and when males are victims, acts of exposure are invariably a prelude to a touching or an assault.

In the national surveys undertaken by the Committee, information was obtained about whether exposure of genitalia and the nude body had occurred and the findings obtained indicate that in each of these surveys both males and females were reported to have been victims of these acts.

In comparison to the findings of the National Population Survey, proportionately more females and fewer males were reported to have been victims of acts of exposure in the three national surveys of public services. The smallest proportion of male victims, about one in 13, was reported in the National Police Force Survey; two in three (66.4 per cent) had been recorded as indecent assault male. Since much of the research on acts of exposure has been based on an analysis of the offence of indecent act, the results given here may partially explain the widely held belief that offences of this kind are not committed against males. The findings of the population and police surveys with respect to the sex of victims are confirmed by the findings of the hospital and child protection surveys where respectively it was found that one in six (17.5 per cent) and one in nine (10.7 per cent) victims were males.

National Survey	Acts of Exposure	
	Male Victims	Female Victims
	Per Cent	Per Cent
Population	31.0	69.0
Police Force	7.5	92.5
Hospital	17.5	82.5
Child Protection	10.7	89.3

The results of the national surveys confirm the findings of other studies that females are predominantly the victims of acts of exposure. While the number of incidents involving boys is small, this finding is unexpected in light of the results of most research reports on exhibitionism. The findings indicate that acts of exposure are committed against boys which are not followed by an assault.

Age Distribution

In the research on exhibitionism, it has generally been found that between one in five and one in two victims are children. Depending upon the source of the information, the age range of the children has varied, but instances have been reported where children two years or younger have been exposed to by an offender. In the cases documented in the National Police Force Survey, the average age of the children who were age 15 years or younger was 11.3 years for girls and 9.8 years for boys. Proportionately more younger boys than younger girls were the victims of acts of exposure, with one in five boys (20.5 per cent) and one in 15 girls (6.5 per cent) having been six years-old or younger. Some of these children were infants. Among the young girls, three were two years-old or younger; eight were three years-old; 13 were four years-old; 29 were five years-old; 46 were six years-old; and 71 were seven years-old.

Less than half of the girls (45.4 per cent) who had been exposed to were 11 years-old or younger, while over half (54.6 per cent) were between 12 and 15 years-old. In contrast, about one in nine of the boys (11.5 per cent) who were 14 and 15 years-old had been exposed to by another person.

The findings of the National Population Survey indicate that **a majority of the victims of acts of exposure were children or youths when these kinds of acts had been committed against them for the first time.** Accumulatively, about half of the victims had been under 16 years-old, two in three had been under 18 years-old and five in six had been under 21 years-old. Only one in six victims had been an adult when he or she had been exposed to for the first time.

Time of Occurrence

As was the case for sexual assaults against children, there were seasonal and time-of-the-day variations when acts of exposure were committed. Depending upon the sex of the victim, the trends were somewhat different for acts of exposure and sexual assaults. There was a somewhat more uniform seasonal distribution of acts of exposure than of assaults when girls were victims, and during the summer and autumn months, proportionally more boys had been exposed to than had been sexually assaulted. Also, unlike the relatively even distribution of sexual assaults occurring during the days-of-the-week, proportionately more acts of exposure were clustered during weekdays with fewer reported on weekends.

The 1961-62 study of the general occurrence records of the Toronto Police Force found that the seasonal distribution of indecent acts was "more or less random."[7] However, there was a peaking in the occurrence of these offences during the summer months (31.5 per cent). In the present study undertaken two decades later, a similar peaking in the number of acts of exposure reported to the police occurred during the summer months.

Seasons	Males Exposed to	Females Exposed to
	Per Cent	Per Cent
Spring	23.7	26.6
Summer	33.9	28.5
Autumn	26.3	25.4
Winter	16.1	19.5

Not unexpectedly, cold Canadian winters are a partially effective deterrent which afford protection to children from acts of exposure. With the exception of this season, the results suggest that children are at risk of being exposed to all times of the year.

In the day-of-the-week reporting of sexual assaults to 28 police forces across Canada, there was a relatively random occurrence of these offences with a slight peaking occurring on Saturday. In contrast, acts of exposure reported to the police occurred more frequently on weekdays and less often on weekends than did assaults against children.

For both boys and girls, four in five offences happened between Monday and Friday, a trend comparable to the results (85.7 per cent) of the 1961-62 Toronto study of persons charged by the police for having committed these acts.[8]

Day of Week	Males Exposed to	Females Exposed to
	Per Cent	Per Cent
Sunday	10.4	8.1
Monday	8.6	14.8
Tuesday	25.0	15.4
Wednesday	11.2	17.8
Thursday	18.1	16.2
Friday	17.2	16.4
Saturday	9.5	11.3

In contrast with the time-of-the-day occurrence of sexual assaults against children, of which about three in five occurred during the morning and afternoon, four in five (80.7 per cent) acts of exposure were committed during daylight hours. These results are hardly surprising, since this is the time of the day when children play outside their homes or travel to and from school.

Time of Day	Males Exposed to	Females Exposed to
	Per Cent	Per Cent
Morning (5 a.m. — 12 p.m.)	15.5	16.4
Afternoon (12 p.m. — 6 p.m.)	63.6	64.4
Evening (6 p.m. — 10 p.m.)	15.2	16.2
Night (10 p.m. — 5 a.m.)	2.7	3.0

Although slightly different time-of-the day periods were used in the 1961-62 Toronto Police Force study[9] and the National Police Force Survey, the results of the two studies are comparable. In both instances, most of the acts of exposure occurred during the daylight hours.

Where the Offences Occurred

The classification of locations where acts of exposure occurred is identical to the listing of locations used in the review of sexual assaults against children. In this listing, a private place was defined to include: the residences of victims, suspects or offenders and third parties; and an assortment of other places, such as hotel or motel rooms. All other locations where these acts were committed are considered to be public places generally accessible to all persons.

There is a broad agreement in the research on acts of exposure that a majority of these offences are committed in "open" places or involves offenders exposing themselves at windows or doors facing other houses or streets. When only acts of exposure to females are considered (for purposes of comparability), the results of several of the main studies on these offences are remarkably similar in relation to the proportion of acts reported to have been committed in open places. These findings are given in Table 8.1. When the categories of Open Spaces, Streets/Laneways and Other Places are grouped together, the proportion of acts of exposure occurring in these locations was:

- 77.1 per cent — 1957 British study
- 74 per cent — 1956-59 Toronto Forensic Clinic study
- 73.9 per cent — 1961-62 Toronto Police Force study
- 74.3 per cent — National Police Force Survey

The comparability of these results confirms that three in four of these acts occur in open places. However, the results differ sharply in terms of where the remaining one in four acts had occurred. The two larger studies (1957 British study and the 1981-82 National Police Force survey) found respectively that 6.9 per cent and 5.3 per cent of the acts were committed from an offender's car. In contrast, the two smaller studies (1956-59 Toronto Forensic Clinic and 1961-62 Toronto Police Force study) reported that between 30 and 41.3 per

Table 8.1

Location of Acts of Exposure to Females[1]

Location of Acts	Research Report			
	1957 British Report (n=462)	1956-59 Forensic Clinic (n=54)	1961-62 Toronto Police (n=92)	National Police Force Survey (n=1,495)*
	Per Cent	Per Cent	Per Cent	Per Cent
Open spaces	30.5	8.0	15.2	23.8
Streets	46.6	36.0	17.4	50.5
Houses:				
• Within houses	2.6	11.0	18.5	8.5
• From houses	10.8			
Vehicles	6.9	30.0	41.3	5.3
Other Buildings, Places	2.6	13.0	7.6	11.9
Total	100.0	98.0	100.0	100.0

[1] For comparability with other reports, only the experience of female victims is given from the National Police Force Survey.

*No listing of location for 7 cases.

cent of the offences had been committed by offenders who were in cars. Based on its findings that about a third of the exposures had occurred from an offender's car, the 1956-59 Toronto Forensic Clinic study concluded that:

> "the compulsion to exhibit is greater than the fear of police or court . . . offenders exposing from a car leave a visiting card behind them in the form of their licence number."[10]

Findings such as these have been drawn upon by several observers to support the conclusion that when the impulse to expose occurs, it is unrestrained and transcends any rational concern or fear of being caught while the person is committing the act. Indeed, it has been suggested that some of the offenders may even wish to be apprehended.

The differences between these research findings in relation to the proportion of offenders exposing themselves from vehicles may be partly accounted for by the differences in the ages of the victims studied and by the fact that in two larger studies, the experience of children who were victims was documented for a number of different cities and towns. Children who were female victims constituted: 49.5 per cent of 786 victims in the 1957 British study; 41.8 per cent of 55 victims in the 1956-59 Toronto Forensic Clinic study; 51.4 per cent of the victims in the 1961-62 Toronto Police Force study; and (excluding 122 male victims), all (100.0 per cent) of the 1,502 victims under age 16 in the National Police Force Survey. With respect to these age differences, it may be the case that more exposures to adult females than those to children occur from vehicles.

In the case of the two smaller studies, how the cases were selected may also partially explain the differences that were found. In one instance, the study group comprised offenders referred for psychiatric assessment. In the second study, the cases were selected from the records of one police force on the basis of persons charged with having committed indecent acts.

Neither the findings of the 1957 British study nor the National Police Force Survey appear to support the conclusion that exposers wished to be caught or were unconcerned about hiding their identities. In both studies, only between one in 15 and one in 19 of the exposures were committed from an offender's vehicle. These findings suggest that in many instances the impulse to expose, while being reported to the police to have occurred in a public place, may not have been done with the intent of being caught or of leaving "a visiting card". An implication of these results is that many exposers knew what they were doing, for as the 1956-59 Toronto Forensic study noted: "the deviation is not a symptom of mental illness or mental defectiveness".[11]

About one in four acts of exposure was committed by exposers in private or public buildings. In the 1957 British study, 2.6 per cent of the exposures to females were in private houses, and 10.6 per cent were exposures by offenders from private dwellings to female neighbours in other houses or to females passing by. In the 1956-59 Toronto Forensic Clinic study, about one in nine acts occurred in private dwellings or emanated from these locations to persons in

other houses or on the street. Allowing for the differences in the classification of locations in these studies, the results of the National Police Force Survey were of the same order, with 8.5 per cent of the acts against girls under 16 years-old reported to have occurred in or from private places.

Of acts of exposure reported in the National Police Force Survey, about three in four acts against girls occurred in open places, while among the considerably smaller number of male victims, about two in three acts had been committed in similar locations. Girls were about twice as likely as boys to be exposed to on the street and, with one exception, girls were the victims of all exposures committed by offenders from vehicles.

Of exposures to girls, nine in 10 were committed in public places, and one in 12 (8.5 per cent) in private places. In contrast, among the much smaller number of boys, one in six acts (15.7 per cent) occurred in private places. While the proportion of the incidents committed in private places is small, it serves as a reminder that not all acts of exposure are committed in public places.

Types of Acts

In the National Population Survey, the victims of acts of exposure were asked to specify which parts of an offender's body had been displayed when the incidents occurred. The results obtained are non-accumulative since when acts of this kind are committed, more than one part of an exposer's body may have been uncovered.

Parts of Body Exposed to Victims	Victims of Acts of Exposure		
	Male Victims	Female Victims	Total
Penis	45.0	98.8	82.5
Woman's crotch	33.3	4.7	13.4
Breasts	55.9	7.8	22.4
Buttocks	49.5	19.2	28.4
Nude body	51.4	16.9	27.3

When acts of exposure are committed, the penis is the part of the body that is most frequently displayed. Exposure of the male genitalia occurred in virtually all acts (98.8 per cent) against females and in over two in five (45.0 per cent) incidents where males were victims. The exposure of the nude body occurred in about one in six incidents (16.9 per cent) where a female was a victim and in about half (51.4 per cent) of the exposures to males.

In contrast to the small proportion of female victims who reported the exposure of buttocks and breasts, about half of the male victims reported the display of these parts of the body. Less than one in 20 female victims reported

that a woman's crotch had been exposed, while acts of this kind were reported by one in three male victims.

Age and Sex of Exposers

It is a widely held belief confirmed by available research reports that acts of exposure are primarily committed by males against female victims. In contrast to this assumption, the findings of the national surveys indicate that both males and females may be exposers and that persons to whom exposures may be made are of both sexes.

In the National Population Survey, it was found that on the basis of the types of acts committed that about one in 13 exposures to females had been by females, and in the instance of exposures of a female's crotch, one in 20 females who had experienced any type of exposure reported that this type of sexual act had occurred to them.

Of the much smaller group of males reporting exposures, over half indicated that females had been involved in these acts and one third reported the unwanted exposure of a female's crotch. Overall, the findings of the National Population Survey indicate that of all persons reporting exposures, about four in five (77.6 per cent) had been by males and one in five by females (22.4 per cent).

When the findings of the National Population Survey are compared with those of the National Police Force Survey, a striking shift occurs in relation to the sex ratio of reported exposers. In the latter national survey, the overwhelming preponderance of persons committing acts of exposure to children were reported to be males (99.6 per cent). Considered together, the findings of the two national surveys suggest that while exposures committed by females occur, relatively few are reported to the police. The findings of the National Population Survey show that male victims are much less likely than female victims to notify authorities of any type of sexual offence committed against them, and the findings on exposures appear to confirm this general trend. What remains insufficiently documented is the nature of the situations in which these different types of exposures may occur, the intentions of male and female exposers and the reactions and consequences for persons involved in these acts.

In two studies on exhibitionism conducted in Toronto between 1956-59 and 1961-62, it was found that most exhibitionists were young men. In the 1956-59 study, 74 per cent of exhibitionists were under 30 years-old and a bimodal age distribution was noted with peaks occurring in the late teens and in the early thirties.[12] In the 1957 British report, 6.5 per cent of the exhibitionists were between 14 and 16 years-old and 6.5 per cent were between 17 and 20 years-old.[13]

Somewhat comparable findings to the trends noted in earlier research reports with respect to the ages of exposers were found in the National Police Force Survey.

Age of Exposers	Males Exposed to (n=384)		Females Exposed to (n=1,369)	
	No.	Accum. %	No.	Accum. %
Under age 18	16	15.4	134	10.2
Under age 29	64	61.5	901	68.8

Because the ages of some exposers who were strangers to victims were unknown, or had not been approximately established, no estimates had been made about the ages of 12.9 per cent of offenders. For cases where this information was available, over two in three exposers (68.3 per cent) were believed to be age 29 or younger with this proportion being higher in incidents having girls (68.8 per cent) rather than boys (61.5 per cent) as victims. These findings do not concur with the stereotype that these acts are generally committed by "dirty old men". Most were committed by young men, of whom one in 10 (10.6 per cent) was under 18 years-old.

Type of Association

In contrast to assailants whose identity is unknown are those strangers whom the victim has seen before, whose place of work may be identified or who can be associated with particular places or events. Instances of strangers who can be identified are so commonplace that this situation is taken for granted. Examples include persons who travel regularly together on a bus, subway or train, the sales staff in stores, newspaper vendors and waiters, among others. In these situations, while the strangers' names are unknown, these persons may nonetheless be recognized and a more detailed identification provided.

When acts of exposure committed by strangers occur, the nature of the association between them and their victims directly affects the likelihood of their being apprehended. In the research on acts of exposure, while there is a consensus that most acts are committed by strangers, a distinction has usually not been made whether their identities are known or unknown to victims.

In two Canadian studies on exhibitionism (1956-59 Toronto Psychiatric Forensic Clinic and 1961-62 Toronto Police Force Study), it was found respectively that 92.6 per cent and 94.3 per cent of the acts of exposure had been committed by strangers. The results of the National Police Force Survey on acts of exposure acts were almost identical to those of the earlier reports. Of acts of exposure committed against children reported to 28 police forces, 92.6 per cent of the offenders were strangers. Only a small fraction of these incidents involved family members, friends, persons in positions of trust and persons whom victims knew.

The type of association between the victims and exposers was somewhat different for boys and girls. While over nine in 10 (93.4 per cent) of the expo-

sures to girls had been committed by strangers, this was the case for only about four in five (82.6 per cent) of the acts where boys were victims. While this difference may be partially accounted for by the small number of incidents in which boys were victims, it may also indicate that different circumstances were involved depending on the sex of the child.

Identity of Suspected Offender	Percentage Boys Exposed to	Percentage Girls Exposed to
Acts committed by strangers	82.6	93.4
Identity of suspect unknown	46.7	57.5
Suspect known	53.3	42.5

While the majority (92.6 per cent) of the acts of exposure were committed by strangers, the identity of a substantial number of these persons was known to victims. In the general occurrence records of the 28 police forces, it was reported that in over half (56.7 per cent) of these cases, charges had not been laid because the identity of the suspect was unknown. In the remainder (over two in five — 43.3 per cent), the suspect was known to the police. **The findings indicate that, although most acts of exposure reported to the police were committed by strangers, the identity of the suspected offenders was known in a larger number of incidents of this kind than is often assumed.** As in the instance of sexual assaults committed by a person whom a child knew, in 43.3 per cent of the acts of exposure where the identity of the suspect was known, factors other than the inability of the child to identify these persons determined whether charges were laid.

Exposure by Groups

Based on the clinical assessment of exhibitionism, the general assumption has been that acts of exposure to females are committed by males who are alone. Acts of exposure committed by these males are believed to be a means of achieving sexual gratification. These men are clinically assessed as being lonely persons unable to achieve adequate sexual relations with females. It is also believed that these persons act impulsively. In this regard, an act of exposure is an outlet for pent-up sexual frustration which cannot be achieved by socially accepted means. The age or appearance of the victim is believed to be secondary to the fact that she is an accessible female who serves merely as an object of sexual release.

Based on the review of the major studies on exhibitionism, it was expected that all of the acts of exposure against children would have been committed by males who were alone. In a majority of the cases of exposure reported in the National Police Force Survey, this assumption was valid. Well over nine in 10

(98.5 per cent) of exposures against children 15 years-old or younger were committed by offenders acting alone. This proportion was somewhat higher than that of sexual assaults against children committed by single assailants who were alone (93.8 per cent).

Number of Suspected Offenders	Males Exposed to		Females Exposed to	
	Number	Per Cent	Number	Per Cent
One	117	95.9	1482	98.7
Two	4	3.3	12	0.8
Three	1	0.8	2	0.1
Four	—	—	2	0.1
Not Reported	—	—	4	0.3

An unexpected finding in the review of the acts of exposure committed against children was that in 21 incidents two or more males were reported to have exposed themselves to young victims. In the 16 incidents where girls were victims, 12 had two offenders, two had three offenders and two had four offenders. There were five incidents of group exposure to boys. Four of these exposures were by two suspected offenders and there was one instance in which three offenders were involved.

In 19 of the 21 incidents involving group exposure to children, information on the ages of the exposers was available. The age range of these offenders was between nine and 23 with their average age being 16.5 years.

Acts of exposure may serve somewhat different functions when they are committed by two or more persons against a victim. In these instances, it appears that they may be undertaken by a juvenile gang as an initiation ritual, as a means of harassing a victim regarded as aloof or unapproachable or as a prelude to a group sexual assault. In these respects, although exposures occur, they are undertaken neither on impulse nor necessarily as a means of final sexual gratification. Rather, incidents of this kind appear to be premeditated and are likely to be undertaken in order to demonstrate sexual prowess and virility.

Alcohol and Drugs

Exhibitionism is listed under disorders of character and behaviour in the *International Classification of Diseases*, and as a result of this classification, persons who expose themselves are nominally considered to be ill. Despite this inclusion as a form of sexual deviation, the clinical research on exhibitionism suggests that few exposers have identifiable mental disorders. In the 1956-59 Toronto Forensic Clinic Report, none of the 54 exhibitionists was assessed as having a psychotic illness, one patient was diagnosed as psychoneurotic and

nine had disorders of behaviour and character.[15] In the 1965 United States Study of *Sex Offenders*, about three per cent of 288 exhibitionists had had a history of mental disorders.

The findings of these studies suggest that few exposers have identifiable mental disorders. There is less agreement, however, about the extent to which exposers may have been under the influence of alcohol or drugs when they exposed themselves to victims. Sharply contrasting results have been reported on this point; these differences may partially be accounted for by whether the persons studied had only been charged and referred for assessment, or whether they had been sentenced to imprisonment.

In the 1956-59 Toronto Forensic Clinic study, only one exhibitionist (1.9 per cent) was reported to have been under the influence of alcohol when the offence had been committed.[16] In contrast, of the 288 exhibitionists whose backgrounds were reported upon the 1965 United States Study of *Sex Offenders*, nearly a third had been drunk and an additional eight per cent had been partially intoxicated when they had committed the offence. Only three of the exhibitionists in this study of convicted offenders were reported to have been drug-users.[17]

The results of the National Police Force Survey on the extent to which alcohol and drugs were reported to have been used by exposers were comparable to the findings of the 1956-59 Toronto Forensic Clinic Study. The results of both studies suggest that of exposers investigated by the police, few had been using alcohol and drugs before or at the time of the incident. As was the case for sexual assaults against children, this information is based on police reports. It is a reasonable assumption, however, that if the police had known that alcohol or drugs had been used, this information would likely have been reported in their accounts.

Few of the children exposed to were reported by the police to have been drinking or using drugs when the exposures occurred. Of the 1,502 girls under age 16, only nine (0.6 per cent) had been using these substances. Five of the girls had been drinking alcohol, two were using drugs, and two were reported under the influence of both drugs and alcohol. None of the boys was reported to have been drinking or using drugs.

Less than two in 100 exposers (1.7 per cent) were known to have been under the influence of alcohol or drugs. Of the persons who exposed themselves to girls, 21 had been drinking, two had been using drugs, and two had used both substances. In only three cases where boys were victims was it known that exposers had been drinking; none was reported to have used drugs. If these findings are considered only in relation to suspects whose identities the police knew, then 3.6 per cent of the exposers to girls and 4.6 per cent of exposers to boys were reported by the police to have been using alcohol and/or drugs.

On the basis of the findings from the National Police Force Survey, it appears that the use of these substances is seldom a factor serving to loosen the inhibitions of exposers, and thereby, affecting their mental state.

Time Taken to Report Exposures

In the National Police Force Survey, over four in five (84.1 per cent) children exposed to either had contacted the police directly or had told members of their families. While boys were somewhat more likely than girls (52.5 per cent and 39.6 per cent respectively) to tell members of their families, proportionately more girls (13.4 per cent) than boys (3.2 per cent) had turned to friends or told teachers and school counsellors.

None of the children exposed to was reported to have contacted a doctor, nurse or other health worker; there was one instance where a girl had contacted a child welfare worker.

The findings concerning persons who notified the police were generally similar to the identities of those whom children had told immediately following an incident. While the majority of complaints (87.2 per cent) were reported by the victims themselves or by members of their families, there were differences in this respect whether girls or boys had been victims. Perhaps reflecting the fact that girls on average were older than boys, almost half (46.7 per cent) were reported to have directly contacted the police. In about a third (35.0 per cent) of these cases, their families had done so on their behalf. In contrast, less than a third (30.3 per cent) of the boys had gone directly to the police; in over half of the exposures to boys (56.6 per cent), their families had laid these complaints.

Relatively few persons unrelated to children had laid complaints on their behalf. Of girls who had been exposed to, about one in nine of the complaints (10.9 per cent) had been made by friends or school personnel, a proportion one and a half times larger from these sources than incidents in which boys had been involved (6.5 per cent). None of the complaints involving acts of exposure was laid by health workers; there was only one complaint laid by a child protection worker.

In the National Police Force Survey, slightly over half of the cases of sexually assaulted children had been reported to the police within 24 hours after the incidents occurred. In contrast, over nine in 10 (93.9 per cent) of exposures to children were reported to the police within a day of their occurrence with this step having been taken as promptly whether girls (94.1 per cent) or boys (92.0 per cent) were victims. These findings are comparable to the results of the 1961-62 Toronto Police Force Study where it was found that 88.8 per cent of indecent acts involving children and adults as victims had been reported to the police within 24 hours.[11]

"Founded" Exposures

Of acts of exposure in which children were victims, virtually all (99.1 per cent) investigated by the police were listed as "founded" occurrences. This pro-

portion is slightly higher than that involving sexual assaults against children. As was the case with respect to sexual assaults, the findings show that the police trusted the accounts reported by children. There were only 14 incidents listed as "unfounded" occurrences.

Charges Laid

Considering the fact that most acts of exposure had been committed by strangers, it is not surprising that charges were only laid by the police in one in five cases (20.0 per cent). The frequency with which this was done was comparable whether boys (20.5 per cent) or girls (20.0 per cent) were victims. However, as was the case for sexual assaults against children, the fact that more charges were not laid by the police is only partially accounted for by the identity of suspected offenders not being known to the police. The identity of the suspect was known in over two in five cases (43.3 per cent), indicating that in one in five instances, factors other than lack of knowledge of the suspects' identities precluded charges being laid.

Acts of Exposure and Indecent Acts

In the National Police Force Survey, information was obtained about: the types of sexual acts committed against children; the listing of the offences recorded in the police general occurrence records; and the charges laid. For each type of information, more than one item might be reported (e.g., children who were victims of more than one assault, or cases where several charges may have been laid).

In some studies on exhibitionism, the assumption has been made that the listing of the offence of indecent act in police records or charges laid of indecent acts are synonymous with an act of exposure having been committed. On the basis of the findings obtained in the National Police Force Survey, it is evident that the offence of indecent act is on occasion used by the police to include sexual behaviour other than acts of exposure.

Information was obtained in the National Police Force Survey about a total of 6203 sexual offences against children and youths under 21 years-old. Of this total, multiple offences were reported by the police to have occurred in one in 18 incidents (5.6 per cent). In all other cases (94.4 per cent), a single offence was recorded, and it was on the basis of this information that a review was made of the type of offence reported by police in relation to acts of exposure committed. As noted previously, only acts of exposure not associated with other types of sexual offences constitute the acts considered here.

Of all acts of exposure reported to have been committed against persons under 21 years-old, four in five (78.9 per cent) were listed as an offence of indecent act in police records. For slightly more than one in five acts of expo-

sure (21.1 per cent), the police general occurrence records listed other types of offences. The point is reiterated that in none of these instances was there an indication that a child or youth had been touched or assaulted with the information provided indicating that only an act of exposure had occurred.

Acts of exposure where offences other than an indecent act had been listed included the following crimes.

Offences Listed with Respect to Acts of Exposure	Number	Per Cent
Rape	27	1.0
Attempted rape	18	0.7
Intercourse with Female Under age 14	9	0.3
Intercourse with Female 14 and 15 years-old	8	0.3
Indecent Assault Female	311	12.0
Indecent Assault Male	81	3.1
Incest	10	0.4
Intercourse with Step-Daughter/Ward	1	0.1
Buggery	1	
Gross Indecency	41	1.6
Indecent Act	2051	78.9
Contributing to/JDA	41	1.6
TOTAL	2599	100.0

In four in five incidents (80.0 per cent) involving an act of exposure, no charges were laid either because the suspects' identities were unknown or for other reasons. For the one in five cases involving only an act of exposure in which charges were laid, in one in six (17.5 per cent) of these incidents were charges other than indecent act laid. In none of these cases did the police records report that an assault had occurred. The charges other than indecent act which were laid included: rape; indecent assault female; indecent assault male; gross indecency; and, contributing to (*Juvenile Delinquents Act*).

Of the incidents of group exposure to children, 14 charges were laid against seven males. These charges included: indecent assault female; indecent assault male; gross indecency; indecent act; and contributing to (*Juvenile Delinquents Act*).

These findings confirm that with respect to the listing of offences in police general occurrence records, it cannot be assumed that the offence of indecent act is synonymous or interchangeable with acts of exposure. While this was true in relation to the police classification of a majority of the incidents of this kind, the exceptions to this rule show that not all acts of exposure are identified by the police as indecent acts, and conversely, that charges of indecent act may include types of sexual behaviour other than acts of exposure.

Summary

1. Acts of exposure constitute the largest single category of all types of sexual offences committed against children and youths. In the National Population Survey, one in five females and one in 11 males reported acts of exposure, and of sexual offences known to the police, where girls were victims, about two in five were acts of exposure, and in incidents where boys were victims, about one in seven involved exposure by another male.

2. In each national survey, it was found that girls were predominantly the victims of acts of exposure.

3. On the basis of the findings of the National Population Survey, it was found that a majority of the victims of acts of exposure were children or youths when these kinds of acts had been committed against them for the first time.

4. There was a seasonal variation in the occurrence of acts of exposure with the fewest of these offences being reported during the winter. A majority of the acts in which children were victims occurred during daylight hours on weekdays.

5. Three in four acts of exposure to children occurred in open places such as parks or streets. Relatively few were made from a car. About one in 12 was committed in a private place.

6. In most acts of exposure, the penis was the part of the body most frequently displayed.

7. Most exposers were young males.

8. Over nine in 10 exposures to children were committed by strangers, with most of the remainder involving acquaintances or neighbours.

9. Virtually all acts of exposure to children were committed by persons who were alone. Most of the incidents having two or more offenders were committed by youths or young adult males.

10. The use of alcohol or drugs was seldom a factor involved in the commission of acts of exposure against children.

11. Following an act of exposure involving a child, over nine in 10 of these incidents were reported to the police within 24 hours.

12. Of acts of exposure to children reported to the police, almost all were listed as "founded" occurrences. The police knew the identity of two in five suspected offenders. Charges were laid in about one in five reported cases of acts of exposure.

13. The offence of indecent act is not synonymous with an act of exposure having been committed.

The Committee's findings clearly show that acts of exposure are relatively frequently committed and that a majority of victims were children and youths when these acts were first committed against them. Because these acts occur so often, and it is believed that victims are not physically injured, it could be

argued that while exposers commit socially unacceptable acts, they should be tolerated as an unavoidable nuisance about which little can be done.

The Committee rejects the premises of this perspective. All Canadians, not just children and youths, have the right to be protected from exposers. There is insufficient information available about the social and psychological consequences of these incidents upon victims, particularly those who are children. Likewise, there is insufficient information available about persons who are exposers, about how often and over what period of time they may commit these acts and about the efficacy of different services and sanctions used respectively to assist or deter them.

In considering different means whereby victims may be afforded protection from exposers, it is evident that there is an informational vacuum with respect to the occurrence of these offences in Canada. No public service system of classification exists which provides for an accurate and continuous documentation of acts of exposure. Police and crime statistics assemble information on indecent acts which are not synonymous with acts of exposure, and even the listing of these offences is usually grouped with other types of sexual crimes. Furthermore, these official statistics provide no information about victims. Relatively few cases of acts of exposure are medically assessed and the clinical definition of exhibitionism does not encompass the full range of acts committed.

The central finding from this analysis of acts of exposure is the sheer prevalence of this form of anti-social behaviour, both in absolute and in relative terms. Given the considerable extent to which acts of exposure of an intentionally insulting nature occur that are committed against children and youths, as documented in both the National Population Survey and the National Police Force Survey, the Committee recommends that such acts should be classified separately and distinctly by the criminal law.

In addition to strengthening the provisions in the *Criminal Code*, the Committee believes that several complementary measures are required if the occurrence of acts of exposure is to be contained or reduced. These measures include establishing the means of more accurately identifying these acts when they are known to have occurred and of educating children and youths about these risks.

With respect to providing more effective protection for children and youths from unwanted acts of exposure, the Committee recommends that:

1. **Section 169 of the *Criminal Code* be retained and that the *Criminal Code* be amended to provide that:**

   (i) **Every one who, for a sexual purpose, exposes his or her genitals to a young person is guilty of an offence punishable on summary conviction.**

(ii) **In this section, "young person" means a person who is or, in the absence of evidence to the contrary, appears to be under the age of 16 years.**

2. **As part of a national program of education and health promotion, children and youths be informed about these risks, and that this educational program be also undertaken as a preventive measure intended to educate and dissuade potential exposers from committing these acts.**

References

Chapter 8: Acts of Exposure

[1] Mohr, J.W., R.E. Turner and M.B. Jerry, *Pedophilia and Exhibitionism*. Toronto: University of Toronto, 1964, p. 114.

[2] *Ibid.*, p. 115.

[3] Mohr, J.W., R.E. Turner and M.B. Jerry, *op. cit.*

[4] Radzinowicz, L., *Sexual Offences. A Report of the Cambridge Department of Criminal Science*. English Studies in Criminal Science. Volume IX, London: MacMillan and Co., 1957.

[5] Mohr, J.W. and M. Wildridge, *Sexual Behaviour and the Criminal Law, Part IV. Indecent Act - An Examination of the Nature of Offences Under S. 158 of the Criminal Code of Canada*. Toronto: Section of Social Pathology Research, Clarke Institute of Psychiatry, 1969 (mimeo) 30 pages.

[6] Gebhard, P.H., J.H. Gagnon, W.B. Pomeroy and C.V. Christenson, *Sex Offenders: An Analysis of Types*. New York: Harper and Row, 1965.

[7] Mohr, J.W. and M. Wildridge, *op. cit.*, pp. 17-18.

[8] *Ibid.*, pp. 18-19.

[9] *Ibid.*, p. 19.

[10] Mohr, J.W., R.E. Turner and M.B. Jerry, *op. cit.*, p. 119.

[11] *Ibid.*, p. 116.

[12] *Ibid.*, pp. 124-125.

[13] Radzinowicz, L. *op. cit.*, pp. 106-108.

[14] Mohr, J.W., R.E. Turner and M.B. Jerry, *op. cit.*, pp. 159-62.

[15] *Ibid.*, p. 118.

[16] Gebhard, P.H. J.H. Gagnon, W.B. Pomeroy and C.V. Christenson, *op. cit.*, p. 365.

[17] Mohr, J.W. and W. Wildridge, *op. cit.*, p. 24.

Chapter 9

Exposure Followed by Assault

The different definitions developed in relation to acts of exposure have expanded or contracted the elements that constitute this behaviour. Depending upon which perspective is adopted, conclusions have been reached about whether exposers are harmless or dangerous and about how they might be more effectively managed. Although research evidence suggests that in some instances exposures are a prelude to assaults, it has generally been concluded that exhibitionists seek to achieve final sexual gratification by their acts of self-display.

In undertaking its review of sexual offences against children, the Committee found in its statistical analysis that there were incidents in which both an act of exposure and an assault were reported to have occurred. In order to document these incidents more completely, a case-by-case review was undertaken of all incidents in which exposures were reported in the National Police Force Survey and the National Population Survey.

The results presented in this chapter do not support the widely held belief that all exhibitionists are harmless. Some of them are dangerous. The findings also suggest that when a child is exposed to, there may be neither warning signals nor behavioural clues to indicate whether only an act of exposure is likely to be committed or whether the act is a prelude to some form of sexual assault.

Assessment of No Danger

A widely adopted clinical definition of exhibitionism specifies that these acts are committed only by males against females and that no form of physical contact occurs. Since this definition precludes any form of touching, the conclusion reached about the character of exhibitionists is hardly surprising, namely, that they are invariably harmless and inadequate persons more to be pitied than to be feared.

Situations in which children may be sexually touched or fondled by an adult are subsumed under the clinical concept of pedophilia. The Greek etymological roots of this term classify these persons as "lovers of children"; the word

has come to be used to denote persons who are sexually attracted to children, but who are believed to do little or no harm to them. In clinical research, the term has been used to refer to a number of different types of sexual acts occurring between adults and children. Under the rubric of pedophilic behaviour, sexual acts have been listed ranging from touching and fondling to assaulting and injuring victims. Depending upon the respective sexes of the offender and the child, a distinction is commonly made between homosexual and heterosexual pedophilia.

Because the concept of pedophilia has been used to encompass a wide range of sexual acts which are often not clearly specified, the term is not used in this Report. It is also unclear in what respects pedophiles are said to love children more than other persons do, particularly when this behaviour involves committing unwanted sexual acts against young victims.

The view that exhibitionists do not touch, or if they do, they do not harm children, has been widely stated. On the basis of this assumption, it has been asserted that such persons may require psychiatric assessment and that their preventive detention is not warranted. As these views enjoy wide credence, a number of statements adopting this position are considered.

In a comprehensive review of the assessment and treatment of child molesters, V.L. Quinsey has noted that:

> "Exhibitionists have been found, in general, not to pose a danger to children, although no extensive study of men who expose themselves exclusively to children has been reported."[1]

In a report on sexual assaults that was written as an information handbook for Canadians, the view was expressed that pedophiles and persons who committed incest with children, because of their affection for them, were unlikely to injure their victims physically and that their victims often reciprocated this affection towards them.

> "Sexual acts which are not considered acceptable in our society, such as incest (intercourse between persons who are closely related) and pedophilia (sexual touching and fondling of prepubertal children by mature adults) usually do not contain the element of hostility. Frequently, the persons involved feel real affection towards each other and the person whose sexual rights are misused may not perceive him or herself as abused or hurt in any significant way."[2]

In the 1953 report on the *Sexual Behaviour in the Human Female*, the Institute for Sex Research obtained information from 4,441 females. The study gave findings on unwanted sexual acts, including acts of exposure. The report concluded:

> "It is difficult, in any given instance, to know the intent of an exhibiting male, but our histories from males who have been involved in such exhibitions and who, in a number of instances, had been prosecuted and given penal sentences for such exhibitions, include many males who would never have

attempted any physical contact with a child. The data, therefore, do not warrant the assumption that any high percentage of these males would have proceeded to specifically sexual contacts. It is even more certain that it would have been an exceedingly small proportion of exhibitionists who would have done any physical damage to the child. In all of the penal record, there are exceedingly few cases of reports of rapists who start out as exhibitionists."[7]

The 1956-59 Toronto Forensic Clinic Study, in which the experience of 54 exhibitionists was reviewed, concluded that while acts of exposure were frequently committed, none of the victims was physically harmed, although some might experience certain psychological after-effects.

"Exhibitionism is important because of the frequency of its occurrence, but is of minor concern in regard to the nature of the act. The consequences, although shocking to many victims, are in general not dangerous to them. This is well recognized by the law . . . "[8]

"The effects on the victim will depend on her own psychological health, her attitude towards sexual matters, her knowledge of the deviation, and especially her realization that no further contact is desired and that there is no impending danger of rape. The fear of an attack is likely to produce a stronger effect than the act itself. Since exhibitionism is not an uncommon deviation and since many women are likely to encounter an exhibitionist sometime in their lives, a general knowledge of the deviation should reduce the possible negative effect of fright."[9]

In a 1964 study of 756 sex offenders on probation in seven provinces across Canada, 153 cases involved persons charged with having committed indecent acts. Of these cases, 139 of the offenders had been put on probation, seven had received other dispositions (fines, suspended sentences, remanded for treatment) and seven were in jail. Based on findings about persons for whom there was limited information about the nature of the indecent acts they had actually committed, the 1964 study of sex offenders concluded:

"Psychiatric services were most frequently used in relation to the Exhibitionistic Offences, 106 cases of a total of 139, or 76.3% . . . it is surprising to find that the highest use of psychiatric services is made in Exhibitionistic Offence cases in which the degree of personal harm to the victim is quite possibly the least."[9]

"Considering the nature of the offence, where in almost all cases there is some distance between the accused and the victim, where the victim is offended, insulted, frightened or surprised but the actual physical contact is almost always absent and the degree of personal harm relatively less than most other sexual offences, it is difficult to see the merit in stress being placed on psychiatric services for this type of offender. That this emphasis is prevalent in most of the provinces suggests a prevailing judicial attitude as to the need of psychiatric services in cases of this kind."[7]

In its 1978 report on *Sexual Offences*, the *Law Reform Commission of Canada* concluded that the application of the offence of indecent act incorporated the phenomenon of exhibitionism was a type of deviant sexual behaviour more properly dealt with by psychiatric treatment than by criminal justice.

"The general formulation of section 169, which prohibits the commission of indecent acts, is applied in practice to the phenomenon of exhibitionism.

> Properly speaking, compulsive behaviour of this kind falls within the province of psychiatry. Nonetheless, the text of the present *Code* imposes criminal sanctions because it is perpetrated in a public place or with intent to insult or offend. Admittedly in the circumstances treatment of the offender would seem to call for psychology or psychiatry rather than criminal justice. All the same, the public unquestionably has a right to be protected against acts outraging its sense of public decency."[9]

The conclusion that persons exposing themselves to children are not dangerous may be valid, but findings are not given in these reports that provide reasonable documentation to support these statements. Furthermore, none of the main studies on exhibitionism focussed directly or in detail on the experience of children.

The conclusion that exhibitionists are harmless rests in part on the conceptual tautology created by the definitions used, and in part, on the sources of information drawn upon in the research studies. As has been noted, the clinical definition of exhibitionism precludes acts of touching, and hence, incidents involving contact are excluded from consideration. As well, much of the research on exhibitionists has been derived either from records of police charges or persons who have been referred for psychiatric assessment. Such information has not been based on a direct review of the actual types of sexual acts committed. To the extent that this has been the case, incidents in which an investigation was made but where charges were not laid, and incidents in which charges were laid with respect to behaviours other than exposures, would have been excluded from consideration.

Assessment of Risk

The findings of a limited number of research reports suggest that a small proportion of exhibitionists respectively either touch or harm victims. All of these studies are based on the records of persons who have been charged, convicted or psychiatrically assessed. In some instances, the results listed do not accord with the principal conclusions given elsewhere in the reports, namely, that these offenders pose no danger to their victims.

- *1956-59 Toronto Forensic Clinic Study*. In this study of 54 exhibitionists, 20 per cent committed another sexual offence within three years. "Exhibitionists exposing to children are more likely to become repeaters than those who expose to adults . . . "[9]
- *1957 British Study of Sexual Offences*. "There was, however, a small group of offenders who exposed themselves to females, usually children, as a preliminary to some form of indecency . . . a small proportion of offenders who were caught *in flagrante delicto*, but might well have gone on to commit a more serious offence if they had not been intercepted."[10]
- *1965 U.S. Study of Sex Offenders*. Of all convicted sex offenders, exhibitionists had the highest proportion of previous convictions for sexual offences. "No other group approaches them in the *per capita* number of

sex-offence convictions."[11] "Almost a fifth involved the use of force on unwilling females."[12]

- *1973 British Study of Exhibitionists.* Eight of 30 males who exposed themselves to females had a history of sexual contact with children; three of these offenders had molested prepubertal children.[13]
- *1975 Clarke Institute of Psychiatry Study.* In a review of 37 heterosexual pedophiles treated at the Institute between 1967-74, 17 per cent either had committed acts of exposure or were classified as being subject to these impulses.[14]

  Of 23 cases of rapists who were seen at the Institute during this period, "25% admitted to indecent telephone calls, exhibitionism or some form of homosexuality."[15]
- *1979 British Midland Centre for Forensic Psychiatry Study.* Of 100 cases of indecent exposure, 45 per cent had a previous record of sexual offences, including indecent assault and more serious sexual offences. "It has often been said that exposers rarely progress to more serious offences (Cambridge Study, 1957; Mohr, Turner and Jerry, 1964), but this study, which indicated that 7 per cent progressed to more serious offences, demonstrates that there are exceptions to this rule."[16]

Although each of these reports dealt with a small number of cases, the proportion of incidents involving both exposure and assaults ranged between about a fifth and a quarter of all persons identified as exhibitionists. The findings suggest that there may be a progression from less serious to more serious sexual offences committed by persons who previously were known to have exposed themselves. The findings of these studies, however, are fragmentary and incomplete with respect to their documentation of the experience of children who were victims of both exposures and sexual assaults.

Case Studies

Of the national surveys undertaken by the Committee, more complete information on acts of exposure to children was obtained in the National Population Survey and the National Police Force Survey. As noted in Chapter 6, many victims of acts of exposure do not report these incidents. When they do, the police are the public service most often turned to for assistance. For both national surveys, all research protocols were individually reviewed with respect to incidents involving both exposures and assaults.

National Population Survey

Of the persons in the National Population Survey who reported that they had been exposed to when they were age 15 or younger, 4.3 per cent of the males and 7.8 per cent of the females said that they had been exposed to and sexually assaulted. Their written accounts indicate the nature of these acts and the reasons why so few of them reported the incidents.

- *19 year-old sales clerk.* When she was 12, a 14 year-old first cousin exposed himself to her. He also threatened to have intercourse with her and touched her breasts several times. Six months later, she told her mother "I felt that because it was a family member, I shouldn't say anything. It should be made clear to everyone that family member or not, it should be reported to someone."

- *43 year-old mother of three children.* Between when she was 11 and 12 years-old, she was initially exposed to. She was subsequently threatened with having intercourse and then raped by "a man who worked on our family farm." She told no one about this. This woman recommended: "Better sex education at school and by parents; and better supervision by adults of children's activities."

- *20 year-old college student.* When she was 15, a 16 year-old boyfriend exposed himself. On another occasion, he threatened to have intercourse with her. Subsequently, he attempted to rape her. "He tried to force to make love with me. He made fun of me because I'd be old and a virgin." She told her sister about what happened. "I could have been helped better if I would have been more informed about sex, its outcome (physically and emotionally). Perhaps if they taught it in school about Grade 7."

- *23 year-old hustler.* When he was 10, a 26 year-old stranger exposed to him several times. The stranger fondled his penis, fellated him and attempted to have anal intercourse. No one was told. "Having to suck a man really changed my life. Maybe, I would be straight now."

- *36 year-old mother of two children.* When she was 14, her 17 year-old brother "exposed himself to me." He then tried to fondle her crotch and breasts. "I was alone with him in the house and scared." No one else in the family was told. "Open discussions with my parents would have helped, however, then it was so hush-hush a topic."

- *32 year-old police officer.* Of an incident in which she had been exposed to at age 12 by a 23 year-old cowboy, she wrote that he then "tried ripping off my clothes." She did not report the incident. "My mother did not want the publicity. As long as there are public instead of *in camera* trials for rape, nothing can really help. The woman is on trial as much as the rapist."

- *23 year-old librarian.* When she was five, she was exposed to several times, had her crotch fondled, and then was subsequently raped by her uncle. None of the incidents was reported. She wrote: "Better communication between parents and children would have prevented such occurrences."

- *57 year-old salesman.* When he was 15, a 23 year-old family friend exposed himself. The adult then fondled the boy's penis and tried to masturbate him. "We slep, together at a cottage one summer and he tried to masturbate me. He did not complete the act after my refusal." The incident was not reported. "I was surprised at his action and told him so in private."

- *56 year-old woman.* When she was 12, she was exposed to by someone whom she knew by sight. The male also fondled her breasts and buttocks. "People came to my aid in the school grounds where it occurred." The incident was reported to the police and family doctor, but "I was too afraid to press charges."

- *40 year-old mother of three children.* She was exposed to by her stepfather when she was 10. He then fondled her crotch and threatened to have intercourse with her. She told her mother, but no one else. "As a child, I was afraid of breaking up an already unstable home. My concern was for my mother. I felt I would have liked to speak to a teacher, but I was unable."
- *25 year-old man.* He was exposed to when he was 12. He was later masturbated by the same 18 year-old male. He wrote: "Wasn't important; part of growing up. My incident was just part of growth."
- *27 year-old mother of four children.* When she was eight, she was exposed to by a neighbour. He then attempted to rape her. "An older man, 25-30 years-old, tried to put his penis in my vagina. He asked me to go for a walk with him. I ran when I realized what he wanted to do." She told no one about the incident. "I was too young to realize what he wanted. I should have been taught something about sex in school so I would know enough not to have gone with this person."
- *29 year-old waitress.* When she was between six and 10 years-old, she was repeatedly exposed to, threatened and touched on her breasts by her father. He also tried to rape her. "My father tried with me. I was marked for a long time about this — it will follow me emotionally through my life." The child finally told a social worker who spoke to her father and the acts were stopped.
- *68 year-old retired high school principal.* When she was 10, she was exposed to several times and had her crotch fondled by a labourer who worked for her parents. "I was too young and too afraid to do anything about it."

The average age of these persons when the incidents had happened to them as children was 10.9 years. Their age range was between five and 15 years. In only two cases were the acts committed by strangers. In about a third, a family member was involved; the remainder of the exposures followed by an assault were committed by acquaintances. In two-thirds of these personal accounts, the child told no one. Many of them felt they did not know enough about sex to realize the significance of the acts, some were afraid and others were too ashamed to tell.

In about a fifth of these incidents a family member was told, but no further action was taken. In only two cases were members of the helping services contacted, and in neither instance were charges laid. In contrast with the findings on acts of exposure in which a majority of the suspected offenders were strangers, incidents in which exposure was followed by an assault were mostly committed by persons known to the child. This close association between victims and exposers-assailants partially explains why so few incidents of this kind are reported to the authorities. It may also account for the conclusions reached by some observers that such incidents do not occur. The victims of these offences are in a position of double jeopardy. On the one hand, they are too young to know how to protect themselves or are afraid to seek help, and on the other hand, most of the persons who exposed themselves and then tried to assault the children were persons whom they knew.

The assaults committed following an act of exposure were, with few exceptions, serious offences. In only about a fifth of these incidents did an offender only touch or fondle a child. In incidents in which boys were involved, they were masturbated or anal penetration by a penis was attempted. Girls who were victims were most frequently threatened with rape, one girl was raped, and another had her clothes torn from her body.

In none of the incidents described in the personal accounts did a child realize that an exposure was likely to be followed by a sexual assault. At face value, only a small number of children appear to be at risk of offences involving exposure followed by an assault. In the National Population Survey, one in 23 males and one in 13 females reported that they had been victims of these offences when they had been children. However, since the National Population Survey was a random and representative sample of the Canadian population, if these rates are prorated to the total population, then it may be the case that a sizeable number of Canadian children are victims of offences of this kind.

National Police Force Survey

In the National Police Force Survey, a total of 1,624 incidents of exposure to children who were age 15 years or younger was reported and there were 63 cases in which exposure was followed by an assault. The proportion of the latter to the former was 3.8 per cent. Since the number of cases of this kind reported to all police forces across Canada is unknown, no estimate can be made of how many such cases routinely come to the attention of the police. Based on the findings of the National Population Survey, in which only 7.1 per cent of cases of this kind were reported to the police, it could be expected that since the National Police Force Survey included a review of the records of many of the largest cities in Canada, only, at most, between 200 and 300 such cases would be investigated annually across the country.

The police general occurrence records were reviewed individually in order to provide additional documentation of incidents in which exposures were followed by an assault. A total of 485 such incidents were found, but in a majority of these cases there was insufficient information to determine either the sequence of the sexual acts committed or to assess whether an exposure had preceded an assault and was not an integral part of the assault. All such cases were set aside and, for this reason, the number of incidents which were investigated by the police in which two separate acts were committed is likely to be an underestimate of the actual number which actually came to their attention.

The case studies based on reports of investigations by the police show that a higher proportion of incidents of this kind was committed by strangers than the proportion reported in the National Population Survey. This finding suggests that when such offences are committed by strangers, they are more likely to be reported to the police. The case studies from the police records also show that relatively few of these offences were reported to have been committed by family members or acquaintances of the child.

- *12 year-old boy* was exposed to by a 22 year-old male neighbour who also masturbated himself. He then fondled the boy's penis and showed him pornography. Cautioned by police and referred for psychiatric assessment.
- *Two sisters, ages five and eight* were exposed to by a 56 year-old male boarder. He subsequently fondled their crotches. Charge of indecent assault female was laid.
- *14 year-old girl* was walking along railway tracks when a 21 year-old male exposed himself to her and then fondled her breasts and buttocks. Charged with committing an indecent act and an indecent assault female.
- *Six year-old boy* on his way to school said "hello" to a middle-aged male who was in an alley. The man took the boy to a garage, exposed himself, and then asked the boy to fondle his penis. The boy was given a dime. Identity of the suspect unknown.
- *Two brothers, ages eight and nine*, while visiting a hospital were exposed to by a 33 year-old male who was sitting in a wheel chair. One of the boys was persuaded to masturbate the patient. No charges were laid.
- *Eight year-old girl*, while playing in a government subsidized playground, was approached by a male with his penis exposed. The man asked the girl to play with him and forced her to fondle his penis. Identity of suspect unknown.
- *Seven year-old girl* was exposed to in a school yard by a young man. He offered her a dollar for a kiss. He kissed her and fled. Identity of suspect unknown.
- *12 year-old girl* was playing in a park. She was helped onto a slide by a 25 year-old man who exposed his penis and then caressed her buttocks. Charge of indecent act was laid.
- *Two 15 year-old girls* walking on a street were followed by a man who exposed his penis and then tried to proposition them. He grabbed one of the girl's breasts. They resisted using a stick. Charges of indecent act and indecent assault female were laid.
- *10 year-old girl* was playing with friends when a 55 year-old male neighbour called them over to his garage. He was exposing himself. He pulled the girl to him and fondled her breasts, buttocks and genital area. Suspect was cautioned. Charges not laid due to child's age and lack of evidence.
- *15 year-old girl* knew by sight a 56 year-old man from walking her dog in the neighbourhood. The previous summer, he had repeatedly exposed himself and threatened her unless she fellated him. During the incident, after exposing himself, he threatened and fondled her. Charges were laid of indecent act and indecent assault female.
- *Three year-old girl*, while having her diapers changed by her mother said that she had seen a man's "dicky bird" when she had been in the stairwell of the apartment building. The man later took the girl to his apartment, where he had the child touch his penis. Suspect unknown.
- *Three children, two girls and a boy between four and eight years-old* were playing at the side of a road when a man drove up in a car, exposed himself and offered each of the children a dollar to touch him. They did. Identity of suspect unknown.

- *Eight year-old girl* was exposed to in her home by a 33 year-old man who was a friend of her father. He subsequently had thigh intercourse with her. Charges of indecent act, indecent assault female and gross indecency were laid.
- *Eight year-old girl* was approached in church by a young man. He offered her $2 to go outside with him. He exposed himself to her and then had her touch his penis. Identity of suspect unknown.
- *Five year-old girl and a friend* on their way home from school were taken by an adolescent boy to a garage. The boy exposed himself. He pressed his body to one of the girls, simulated intercourse with her and lay on top of the other girl, while fondling her genitals. Suspect unknown. Credibility of the victims questioned in police general occurrence report.
- *Eight year-old girl and a friend* were called over to a car in which a man exposed himself, grabbed one of the children by the shirt and masturbated himself with his other hand. Identity of suspect unknown.
- *10 year-old girl* was approached by a male jogger who was exposing his penis. He asked her to touch it. She did and he ejaculated. Identity of suspect unknown.
- *12 year-old boy*, while walking along railway tracks, was approached by a man and offered $10 to show his penis. He refused. The man then undressed and forced the boy onto his hands and knees. Identity of suspect unknown.
- *Six year-old boy*, while in a playground, was approached by three youths, one of whom had his penis exposed. The boy was forced to take the penis of one of the youths in his mouth. Identity of suspects unknown.
- *Four year-old girl* was taken several times by a 57 year-old neighbour into a garage where he exposed himself, had her touch his penis and fondled her crotch. Age of child, lack of evidence and lack of corroboration were cited as reasons why charges were not laid.

The suspect was unknown in slightly less than half (47.6 per cent) of the incidents of exposure followed by an assault of a child investigated by the police. Charges were laid in 45.5 per cent of cases where suspects were known. In about two in five of the cases where the police knew the identity of the suspected offender, charges were not laid due to the mental or physical condition of the male offenders. In the remainder, charges not laid were due to lack of evidence, to the child's age and to the child being disbelieved. In virtually all cases of this kind (95.2 per cent), the charges were listed as "founded" by the police, an indication that the police believed the great majority of the accounts related to them by the children who were victims of acts of exposure followed by an assault.

Summary

The Committee's findings on acts of exposure followed by a sexual assault do not support the view held in some quarters that all persons who expose

themselves to children are harmless and should be considered more of a nuisance than a threat to victims. The findings in Chapter 8, *Acts of Exposure*, indicate that a large number of these persons only expose themselves and do not touch or assault children. However, the Committee's research findings also show that in a small proportion of instances, acts of exposure are followed by a sexual assault against a child or youth, and that if this ratio is prorated to the Canadian population, then a sizeable number of Canadian children are likely to be at risk of being victims of these types of offences.

In the absence of more complete findings and evidence to the contrary, the conclusion cannot be accepted that persons who commit such acts are harmless and do not commit more serious crimes against victims. In this regard, the Committee does not accept the conclusion of the major previous Canadian study on exhibitionism, namely, that:

> "Since exhibitionism is not a progressively dangerous sexual offence, legislation involving preventive detention cannot be justified . . . Because sexual offences evoke an emotional reaction, not only in the general public, but also those dealing with the offender, it is especially important that judicial and correctional procedures be based on what the problem is, and not on what it is feared to be."[17]

The Committee considers that there is insufficient evidence to conclude that "exhibitionism is not a progressively dangerous sexual offence" or that "legislation involving preventive detention cannot be justified". Nor can it be assumed, as the *Law Reform Commission of Canada* has concluded, that "properly speaking, compulsive behaviour of this kind falls within the province of psychiatry".[18]

On this issue, the 1956-59 Toronto Forensic Clinic Study stated that:

> "The deviation is not a symptom of mental illness or mental defectiveness, nor is it necessarily indicative of general immoral behaviour."[19]

> "Hospitalization is seldom required since neither the mental state nor the element of danger justifies certification. Serious mental disorder or mental retardation are found in only about five per cent of the cases. Most of the additional psychiatric diagnoses that are associated with exhibitionism fall into the category of character disorder, such as immature or inadequate personality."[20]

> "After some 12 years of assessing and treating exhibitionists in a clinical outpatient setting, our experience shows that the kind of assistance required by a large majority of exhibitionists may be quite adequately provided by probation officers. Psychiatric services may be more appropriately and widely used for consultation in difficult cases rather than carrying the load for all cases. There are not proven cures for exhibitionism and, as yet, no evidence that intensive psychiatric care yields appreciably better results than case management procedures which are within the capabilities of trained probation officers."[21]

If, as the findings of the Committee and a number of other studies indicate, some persons who expose themselves to children are also likely to assault them, and if, based on psychiatric assessment, it appears that most of these

offenders are not mentally ill, then the Committee believes that legal sanctions must be retained with respect to persons who commit these acts. The Committee believes that there is a need to establish a means for the continuing surveillance by enforcement and correctional authorities of persons who commit these acts against children, and that a comprehensive assessment is warranted of the efficacy of the management of offenders put on probation, fined, given suspended sentences, remanded for treatment, or jailed. No such comprehensive and detailed evaluation is now available.

In order to assemble more complete information on acts of exposure and acts of exposure followed by a sexual assault, the Committee recommends that the Office of the Commissioner in co-operation with the Canadian Association of Chiefs of Police mount a national prospective fact-finding study in which:

1. **Persons reported to have exposed themselves to children and youths would be identified.**
2. **A monitoring of any subsequently reported offences would be established.**
3. **An evaluation be undertaken of the outcomes and effectiveness of different management procedures and sentencing practices in relation to reducing recidivism.**
4. **The classification of these acts in Uniform Crime Report Statistics be revised in order to permit the accurate identification of these acts on an ongoing basis.**

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Chapter 9: Exposure Followed by Assault

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Chapter 10

Children Who Were Killed

The Homicide Statistics Program established by the Justice Statistics Division of Statistics Canada in 1961 assembles information on all cases of murder, manslaughter and infanticide that are reported by the police, the courts and correctional services across Canada. This national register is unique among the various sources of criminal official statistics because of the breadth of the information that it assembles, its continuity spanning a period of over two decades, and the fact that, unlike other sources, it provides information about the victims of the homicides as well as on the persons who are suspected, charged or convicted of these deaths. Collated by means of a standard reporting protocol, the findings of the national register of homicides reflect changes in reporting procedures, the introduction of new legislation bearing on these crimes, and since 1974, the separation of homicides into different categories listing separately murder, manslaughter and infanticide. The index does not draw upon the findings listed in death certificates; a different system of classification is followed in the reporting of mortality statistics for the nation.

During the initial review of police records that was undertaken in relation to the National Police Force Survey, it was found that homicide cases were kept separately and that no distinction was made in these sources between homicides that were caused by sexual abuse and by other means. In smaller police forces whose recording systems function on a manual basis, obtaining information on homicides involving children entails the drawing and checking of all homicide occurrence reports. Depending on the size of the police force and whether a separate unit handled homicides, the nature of all types of sexual assaults cannot be readily documented without reviewing the cases with the police who undertook these investigations. It is for these reasons that information was not collected on sexually motivated child homicides during the course of the National Police Force Survey and that, in this regard, the national homicide register was drawn upon as the principal source of information.

At the request of the Committee, the Justice Statistics Division of Statistics Canada provided a special tabulation of all homicides of children between 1961-81 that were listed as being sexually motivated or that had involved sexual assaults. Sexual assault murders were defined as: "murders which were

preceded or accompanied by rape or indecent assault, or were sexually motivated." Sex-motivated murders include deaths in which the "suspects did not sexually attack the victim, but had previously made sexual advances (degree or intensity of advances are unknown) and after they were rejected, murdered the victim".[1] Lovers' quarrels or love triangles are listed separately from sexual assaults and sexually motivated murders; they involve cases having "personal relationships. . . (such as). . . fiance/fiancee, boyfriend/girlfriend, mistress/lover and homosexual relationship."[2]

Incidence of Child Homicides

There are no historical baseline studies that can be drawn upon as a benchmark to answer the question: "Are more children and youths sexually assaulted now than in the past?" There have been no direct studies of Canadians in which these questions have been asked that can serve as a basis for such a comparison. Official criminal statistics do not report information about the victims of criminal offences.

The national register of homicides for the period between 1961 to the present is the only source of criminal statistics known to the Committee that assembles information for Canada on a uniform basis about the victims of sexual offences. Among the interpretations of the reporting of criminal statistics, the three most prominent approaches have been: a positivistic analysis; a critical perspective; and an institutional supply model. Among these, there is agreement only on the recognition that official statistics do not reflect accurately the true extent to which offences are committed.

The *positivistic* approach, while acknowledging deficiencies in official statistics, assumes that "nonetheless, they represent an indicator of the crime rate" and thus that they may be drawn upon "to analyze the crime that is known to the justice system."[3]

Contrasting with this approach are the assumptions of a *critical perspective* that contends that apparent increases in reported crimes are a statistical mirage whose proportions are swollen by the inclusion of a sizeable number of minor offences. One historical review of crime rates for Canada for the period 1950-66 that was subsequently updated to 1977 concluded that "neither total indictable victims nor charges were found to have increased" and that there were "real decreases in a number of important offence categories."[4]

The critical perspective challenges the validity of official crime statistics on the grounds that these rates are often inflated in order to justify the need for more enforcement services and the meting out of harsher sentences. It is alleged, for instance, that the police are "notorious for exaggerating increases" in the reporting of crime, that Statistics Canada "never understates a gloomy crime statistic" and that "Canadian crime legislation very much reflects the

particular interests of the holders of economic and political power."[5] By fostering a sense of public alarm, public enforcement services are said to justify their existence and the need for increased public support as well as showing that "recourse to repressive measures can be better defended."[6]

The *institutional supply model* of interpretation of changes occurring in crime rates assumes that these are indicators of the dominant characteristics of any nation and its different regions. From this perspective, the reporting of crime is contingent upon a country's wealth, the level of education of its people, the adequacy of its public services, and the size of its police forces and the population of its large towns or cities. Where these occur in conjunction, and as they rise, there will be higher rates of reported crimes. An interpretation based on this perspective would conclude that reported crime rates are higher in those regions of Canada where the inhabitants are better educated, have higher incomes, more live in urban areas and where public services are more efficient and police-to-population ratios are lower.[7]

What is absent in the discussion of the interpretation of crime rates for Canada, and whether or not they have been rising, is a firm body of information upon which to test these conjectures. It may be the case that the salient points of each perspective are not contradictory, but are complementary in explaining the occurrence of crime.

Regardless of how the trends involving sexual assault homicides having children as their victims are interpreted, there is no doubt that the reported incidence of these killings has risen in both real and proportional terms between 1961 and 1980. During this period, there was an average of 7.8 such deaths each year of children and youths who were 20 years-old or younger. In the following listing, these deaths are grouped into five year periods. The average number of deaths annually for each period is listed as well as the rate of the deaths per one million children under 16 years of age. The number of the children under age 16 in Canada decreased from 6,909,900 in 1965 to 6,001,000 in 1980.

Years	Total of Child Sexual Assault Homicides[1]	Annual Average Number	Rate per One Million Children Under Age 16
1961–65	20	4.0	2.9
1966–70	30	6.0	4.6
1971–75	62	12.4	9.6
1976-80	43	8.6	7.2

[1] Year of one child homicide was not listed in the statistical tabulation provided to the Committee.

During this period of two decades, there was a doubling in the occurrence of these deaths when they are considered by themselves and are not adjusted for the changing age composition of the Canadian population. During the peak five year period between 1971-75, this number rose to 13 deaths for each of 1971 and 1974 and 22 deaths during 1973. In terms of their incidence based on

rates per one million children, there was an increase in the reported sexual assault child homicides from 2.9 to 7.2 per million children between 1961-80, or an overall increase of 148 per cent. The rate of these deaths peaked at 9.6 per one million children between 1971-75.

Age and Sex of Children

For the period 1961-80, 156 sexual assaults and sexually motivated homicides involving children and youths (under age 21) were reported to the national register. The sequence of attrition occurring between when the crimes were reported to the police and their disposition by the courts parallels the trends in these respects for all types of crime. In about half of the cases (52.3 per cent), the offenders of the sexual assault child homicides were imprisoned for these offences. The identity of the assailant was unknown in about a quarter (23.1 per cent) of the deaths. Of the homicide suspects whose identity was known, several subsequently committed suicide, a number were insane, and in about a seventh of the deaths, the suspects were acquitted at court hearings of the charges laid against them.

A majority (84.0 per cent) of the young victims were females. Two of the killings were of infants under two years-old. During this period of two decades, sexually motivated killings of children involved: 11 who were between 2-6 years, 29 who were between 7-11 years, 21 who were between 12-13 years, and 25 who were between 14-15 years.

Depending upon their ages, the risks of being the victims of these crimes were different for boys and girls. Among the 22 boys who were killed in which sexual assaults had occurred, half were between 7-11 years with the remainder being evenly distributed between the younger and the older age categories. In contrast, the number of these types of killings rose with age among the 67 girls who were under age 16. One female child was under the age of two years, 10 were between 2-6 years, 18 between 7-11 years; 17 between 12-13 years and 21 were 14-15 years.

The most frequent ways that the children were killed were: strangling (34.6 per cent); beating (20.5 per cent); and suffocating (9.0 per cent). Alcohol and/or drugs had been used by assailants before or during one in four of these deaths (23.1 per cent). Weapons were used in about a third (29.2 per cent) of the deaths with stabbing by knives occurring twice as often as deaths caused by firearms (19.6 per cent versus 9.6 per cent).

When the experience of children and youths is considered separately from the homicides involving adult victims, it is apparent that they are not only the victims of serious and violent crimes, but they also constitute a high risk group among sexual assault homicides.

The special tabulation of sexually related child homicides prepared for the Committee shows that when these types of crimes are committed, children and

youths are an especially vulnerable group. For the 14 years between 1961-1974, children under the age of 16 years constituted about a ninth (11.7 per cent) of the 4,658 homicides reported by the police that were listed in the national register of homicides. Of this total, **there were 104 sexual assault homicides. Children under the age of 16 were the victims of two in five (43.3 per cent) of these deaths.** In contrast, children under 16 years were the victims of only 10.9 per cent of all other types of homicides.

Type of Homicide	All Homicides 1961-74	Children under 16 Years	
		Number	Per Cent
Sexual assault homicides	104	45	43.3
All other homicides	4,554	498	10.9
Total	4,658	543	11.7

In a number of studies on crime rates for Canada, the very young and the elderly have been omitted in the calculation of these statistics. This omission was based on the peculiar assumption that since persons in these groups seldom commit crimes of violence against the person, they should be excluded in the calculation of rates relating to the victims of these crimes. In one analysis, for instance, it was noted that certain crime statistics are based on a population denominator of persons who are seven years or older since this is "the minimum age of mitigated responsibility for minors."[8] In an international comparative review of crime rates which included the Canadian experience, "all figures were deflated by the population aged 10-40, the population most at risk for criminal behaviour and sanctioning."[9]

The exclusion of certain age groups in the population in studies deriving estimates of the prevalence of crime serves, by definition, to inflate the numerator or the apparent number of offences that are reported by comparing them with a smaller number of persons who may be at risk as the victims of these offences. This approach also masks the extent to which certain age groups such as children may be at greater risk for certain crimes relative to their numbers in the population.

Minority Groups

Most of these young victims were Caucasian (84.6 per cent) and about a ninth (11.3 per cent) were Indian and Inuit children. In the report by Statistics Canada, *Homicide in Canada: A Statistical Synopsis*, (1976), it was concluded that:

"The Native Peoples are homicide victims far out of proportion to their relative population size. While Native Peoples constituted 1.2% of the population in 1961 and 1.5% in 1971, 16% of Canada's homicide victims since 1961 have been Indian, Metis or Eskimo. Homicides among the Native Peoples are committed disproportionately and mainly in the context of domestic relationships."[10]

A similar trend exists for child homicides involving sexually related offences. If 1971 is taken as a midpoint in the listing of the homicides for 1961-1980, then the proportion of Indian and Inuit children under age 16, which was higher than for other Canadians, was 2.14 per cent of all Canadian children. If the general ratio is applied on the basis of the 151 child homicides whose racial origin was known during this period, three of the homicides would be expected to have been against Indian or Inuit children. In contrast, the homicide register listed 17 deaths, or 11.3 per cent of the total, as being Indian and/or Inuit children who were killed in sexual assault homicides.

While the number of children involved is small, this finding, if it is considered by itself, appears to indicate that Indian and Inuit children are a highly vulnerable group having over four times the number of the deaths that would be expected in terms of their numbers in the general population. A comparable imbalance is found among the persons who were charged with these crimes with Indian and Inuit males constituting 8.9 per cent of the suspects or offenders, or over five times the number that would be expected in terms of their numbers in the general population.

Because of extensive intermarriage between persons from different groups, most Canadians have a mixed cultural background. The identification of an individual's ethnicity in official statistics is based on an arbitrary labelling that has little to do with the values actually held by individuals. There is no uniformity between different classification systems used by official agencies in identifying a person's cultural background.

In the collection of Canadian Census Statistics, persons are asked to which cultural group their male ancestor who originally came to this country belonged. If there is uncertainty on this, then the language spoken by that male ancestor is used as the basis to determine a person's ethnicity. In the information fact sheet used by the National Register of Homicides, the category listed as "racial origin" includes : Caucasian, Negroid, Mongoloid, Canadian, Indian, Eskimo and Inuit. The instructions for completing this item on the form provide no definition of how the police, the courts and the correctional services should proceed in identifying an individual's "racial" background. The decision in completing this item is made without the benefit of having uniform criteria set out for each responsible official to follow. Canadian Census Statistics and Homicide Statistics identify respectively, then, a person's *ethnic* background and *racial* origin, two categorically different social facts.

Considerable caution is warranted in the interpretation of homicide statistics which, at face value, apparently show that Indian and Inuit people commit

homicides "far out of proportion to the relative population rates." This caveat should also be heeded with respect to child homicides involving sexually related offences. The findings may be valid. However, the evidence upon which they are based is seriously flawed. A more consistent and accurate identification of the cultural and/or racial origins of all Canadians is required before conclusions can be reached about the vulnerability as victims, or the likelihood of committing crime, of any particular group in the population.

The Assailants

In comparison to all Canadian males, the men who were charged with these homicides were disproportionately older teenagers (32.5 per cent) or younger adults (45.8 per cent between 21-30 years). One in seven of the suspects (13.5 per cent) was 17 years-old or younger.

The majority of these assailants were single (66.7 per cent) and most had dropped out of school as soon as they had passed the minimum age educational requirement (81.5 per cent with grade 10 or less schooling). For those whose prior employment was known, many had been unemployed (43.2 per cent) or had worked in unskilled jobs as labourers (30.1 per cent). One in 10 of the suspects (10.3 per cent) was a student when he had committed the homicide.

Between 1961-80, 156 child homicides having sexually related offences were reported to the police across Canada. Two in five (42.9 per cent) of the crimes resulted in the offenders being sentenced by the courts to life imprisonment and an additional one in 10 (10.3 per cent) was given a lesser sentence ranging from under two to over 10 years in prison. Among the rest of the cases were instances in which: suspects were known (30 cases); suspects who were subsequently acquitted (15); and some who had committed suicide (5) or who were judged to be insane (1). Three cases were handled under the *Juvenile Delinquents Act*.

Type of Association

Nine of the child homicides involving sexually related offences (8.1 per cent of all young victims for whom this information was known) were committed by a person having a kinship or domestic relationship with the children. These suspected offenders included: a brother/half-brother; two uncles; four cousins; a foster brother; and a parent's common-law partner. Because of the method of classification, by definition, the majority of the crimes were committed by persons who did not have close domestic or position of trust relationships with these children. That more of the killings were committed by persons who were well known to the children than is reported in these statistics appears to be indicated by the nature of the locations where these killings occurred. About

a third of the homicides (31.8 per cent) occurred either in the homes of the victims or the suspects, and one in 11 (9.3 per cent) in other private locations. Only a quarter (23.7 per cent) of the child homicides had been committed in public places such as parks, streets or alleyways. The remainder of the deaths occurred in an assortment of other locations.

Two boys and seven girls had been killed in sexually motivated homicides by members of their families, households or relatives. There is no separate category in the national register of homicides that distinguishes homosexually motivated killings. The likelihood that young males may be a highly vulnerable group when these types of crimes are committed is indicated by the fact that for 22 of these 25 deaths, a non-domestic criminal act was reported with all of the suspects or convicted offenders being males.

Classification of Sexually Motivated Homicides

Each homicide file in the national register lists information on: the selected characteristics of the victims; the circumstances of the incidents; and the legal actions that were taken. While there is a relatively detailed specification about each homicide that, by definition, constituted the most serious offence, there is no listing of the related charges which may have been laid in connection with these deaths. The classification of the incidents occurring in connection with the homicides is given under one of five categories. While this listing provides for continuity in the analysis of homicides since 1961, when this format was adopted, the classification codes developed at that time assumed that certain types of crime either did not occur or happened so rarely that their separate identification was not warranted. As a result, it is not certain that all reported instances of homicides involving sexually related offences are, in fact, identified. There is no sufficiently detailed listing of the relationships between victims and suspects to permit an accurate specification when children and youths were killed as to how many of these acts were committed by persons who were responsible for them, were in positions of trust to them, or may have had an established sexual relationship with them.

The elements of the acts that are committed in relation to reported homicides are classified under one of five categories. Under one of these categories, *Incidents Committed During the Commission of Other Criminal Acts*, the episodes that are listed include: rape, sexual assaults and sexually motivated attacks. Information listed under this category is the exclusive basis for the identification of the number of homicides involving children and adults who may have been sexually assaulted.

In the completing of the homicide records that are included in the national register, the elements comprising these incidents may be classified under a number of headings including: a sexually motivated offence; a sexual assault; revenge; jealousy; anger; or self-defence. Because of the overlapping nature of some of these categories, certain homicides such as those involving incest or

homosexual relations could be equally well listed as resulting from revenge, jealousy or anger.

The listing of the elements of homicides that involve a *Domestic Relationship* includes incidents committed by: members of the immediate family; other relatives; and common-law situations. Beyond this listing, there is no specification of the identity of these "other" persons who may be responsible for the children. This type of information is subsumed under other categories. Included under the category of *Social or Business Relationships*, for instance, are: lovers' quarrels or love triangles which are designated as personal relationships, such as: fiance/fiancee; boyfriend/girlfriend; mistress/lover; and homosexual relationships. In addition to these relationships that, by definition, involve close personal contacts, the category of *Social or Business Relationships* also subsumes situations involving persons having positions of trust to children, such as: employers/fellow workers; teacher/student or live-in babysitters.

The inclusion of these types of relationships under the broad classification of *Social or Business Relationships* means that important and essential information is lost, or cannot be retrieved, in the analysis of certain types of sexually motivated homicides involving children. The aggregate listing of all such relationships together precludes the separate specification of persons whom the children may know or who may be responsible for them. This method of classifying the elements of the incidents related to homicides serves to perpetuate the conclusion that most of the deaths are committed by persons who are casual acquaintances or who are unknown to the children. It is unknown if this conclusion is valid. Based on the general findings of the national surveys undertaken by the Committee, it is likely that a significantly higher proportion of these child homicides is committed by persons whom these children knew than is indicated by the findings of the register. In this respect, the classification system that is used in the national register about the association between victims and offenders masks and undoubtedly underreports the actual situation.

Recidivism

Reported statistical information is incomplete about the convicted dangerous sexual offenders who killed children. While they are few in number and constitute an unrepresentative group, they provide a stern reminder questioning the validity of a number of assumptions about child sex offenders and their management by the helping and enforcement services.

The national register of homicides does not assemble detailed information on the prior records of the offenders listed in its recording system. In the absence of such information, no conclusions can be derived from this source about whether these violent crimes are isolated single assaults, or whether they constitute the culmination of a number of minor offences that may have been previously undetected, or if reported, may have involved charges being laid on

other grounds. The prevailing assumption in much of the research on sexual offences is that while persons committing minor sexual infractions are an intolerable nuisance, it is often concluded that: they are harmless; they are unlikely, once identified to authorities, to repeat these infractions; and they are better dealt with by being fined, by being reunited with their families or by means other than imprisonment that may prove detrimental to their subsequent rehabilitation.

The validity of these assumptions is challenged by the popular belief that there is a progression from minor to more serious sexual offences and by the findings of a number of in-depth studies of convicted sexual offenders who have had extensive prior experience involving unreported and reported crimes that are listed under other categories.

As noted in Chapter 9, *Exposure Followed by Assault*, and Chapter 40, *Recidivism*, the research that concludes there is no progression from minor offences, such as peeping or voyeurism, the stealing of women's clothes or exhibitionism to more serious crimes of sexual violence, derives either from official records or small numbers of offenders who were studied during a short period of time. The assumption of the former type of study is that the listing of police charges or prior convictions reflects accurately the extent to which these crimes were committed.

The assumption that there is no progression from less serious forms of sexual deviance to acts of sexual violence is challenged by a number of in-depth studies of the prior criminal records of convicted sexual offenders. These studies indicate a substantially higher incidence of unreported crimes and of reported crimes involving sexual offences having charges laid under other statutes such as robbery, break-and-enter or contributing to juvenile delinquency. While initial reports on the sexual behaviour of men and women undertaken by the Institute for Sex Research established by A.C. Kinsey concluded that there was no progression from minor to serious sexual offences being committed, the Institute's subsequent study of convicted sexual offenders challenged these premises. In the latter study, numerous instances of recidivism were found involving prior sexual crimes against adults with even higher rates occurring in incidents in which children were victims. The study concluded that among these convicted sexual offenders that:

> "some 56 per cent had juvenile records. . . a precocious criminal development; almost one-fifth committed juvenile sex offences;. . . the aggressors display. . . 3.9 convictions per man;. . . over half of the convictions were for sex offences;. . . offences against property. . . (constituted). . . 18 per cent;. . . 28 per cent of their sex offences involved voluntary heterosexual contact; over one third of the offences were exhibitionism."[1]

In commenting upon the relationship between exhibitionism and peeping, the Gebhard Report noted that: "the stereotype of the timid, harmless peeper need not interfere with our finding that nearly one-fifth of these aggressors'

sex-offence convictions were for peeping: after all, a certain amount of reconnaissance is necessary in selecting the object, time and place for rape. . . a certain amount of exhibition and aggression can be expected to be associated, since some exhibition constitutes a hostile act directed against females."[12]

Two Canadian studies of homicidal sexual offenders have documented the high incidence of previously committed minor sexual offences. Cormier's review of a small number of dangerous sexual offenders found a progression from minor to more serious and sadistic crimes.[13] D.J. West and his colleagues, in an in-depth analysis of 12 serious sexual offenders who were in custody during the mid 1970s at the Regional Psychiatric Centre at Abbotsford, British Columbia, found that prior to the offenders' present convictions, an average of about three previous sexual offences had been committed.[14] Most of the prior offences had been undetected. Where instances of robbery or break-and-enter had been reported to the police, most were acknowledged by the offenders to have been sexually motivated acts, e.g., break-and-enter in order to steal women's clothing.

Among the 12 serious sexual offenders, five had no prior police records, two had been fined and/or cautioned, and five had been previously in prison. In the course of group therapy, the acts that the men admitted they had been involved in included: attempted sexual assaults (six); incest/incestuous behaviour (four); voyeurism or peeping (four); sexually motivated break-and-enter (five); group sex when they had been adolescents or with a teenager (three); homosexual acts (as victims or prostitutes); taking nude pictures (one); and exhibitionism (one.)

Among the 25 sexual offences in which children were involved as partners or victims, 20 (80 per cent) had not been detected by enforcement authorities. Three of the five incidents known to the police resulted in cautions or fines, and in two instances, sentences to a reformatory or prison. Eight of the 25 offences having juvenile victims had involved assaults on unwilling partners. None of these was reported at the time they were committed. Among the 17 offences reported by the prisoners to have been consensual acts (their victims may have thought otherwise), five became known to the police. Of these, most were reported by parents who wished to break up the relationships between their daughters and the offenders. In one instance, the police came upon the participants while an assault was occurring in a car.

Prior to 1975, the Inmate Record System, which was the forerunner of the Offender Information System, assembled a limited amount of information about inmates who were incarcerated in federal penitentiaries. When a prisoner was released on supervision, information about his subsequent activities was not obtained unless he was re-admitted to prison. Prior to 1955, when the Offender Information System was introduced, no information was collected about the major offence category and neither system coded information on the victims of homicides. This type of information was assembled separately by Statistics Canada.

In order for information from these separate sources to be linked, an identification is required listing each inmate's name and number. Following this step, a manual check of the files of inmates who have been discharged is required in order to determine if following their release that further offences may have been committed.

Because of the separation of the main sources of information about persons who have committed homicides and the complexity involved in the identification and retrieval of information about the offences that they may have committed following their release, **no annually updated and centrally maintained source of information is available for Canada about whether the persons who committed sexually related child homicides were involved after their release in committing further sexual offences against children.**

Homicide Statistics Program

Based on its review of the findings assembled in the national register of homicides, the Committee concludes that the current practices followed in the classification of related incidents and the relationships between victims and suspects may substantially under-report sexual assault child homicides. Published findings in this respect are misleading and inaccurate. There is insufficient specification in the initial reporting protocol defining precisely what related acts are committed, over what period of time, or by whom relative to persons whom the children know or who are responsible for them.

Opinion is divided and the available evidence is fragmentary on the issue of whether or not there is a progression from acts of minor sexual deviance to more serious crimes of sexual violence. The absence of reasonably firm information on this important question is a serious gap in providing adequate protection for adults and children and raises questions about the efficacy of existing enforcement and correctional procedures.

The existing systems of collecting and reporting statistics on homicides pay little attention to the victims of these crimes, whether they are children or adults. The information systems operate in such a way as to preclude obtaining a detailed appraisal of the recidivism of all categories of offenders. This is a glaring omission about an issue that concerns most Canadians. If such information were to be collected on a systematic and annual basis, it would permit an evaluation of the effectiveness of different sentencing practices, the benefits that may be gained from the various types of treatment provided for prisoners who are in custody, and the efficacy of the different types of prison settings (minimum to maximum security) in which prisoners are housed.

The means to obtain this important information about this group of offenders are available. The opportunity to assemble this type of information is hindered by the statistical systems that are now in place. In the Committee's opinion, it is mandatory that the existing information retrieval systems be

revised to identify information on the recidivism of persons who have committed sexually motivated homicides with the results being published annually about the experience of particular types of discharged inmates.

In relation to Recommendation 35 given in Chapter 3, **the Committee recommends that the existing classification of homicides be reviewed by the Office of the Commissioner in conjunction with an interagency body (including officials of Statistics Canada, the Department of Justice, the Department of the Solicitor General, the Department of National Health and Welfare and the Canadian Association of Chiefs of Police) with the purpose of developing:**

1. **A full listing of all sexually motivated homicides committed against children;**
2. **A detailed specification of the relationships between young victims and persons suspected, charged or convicted of these offences;**
3. **The listing in detail of the prior criminal charges of persons convicted of homicides; and**
4. **The assembling and the reporting on an annual basis of the recidivism experience of persons convicted of sexually motivated homicides against children and youths.**

The Committee recommends further that in the collection of official criminal statistics and the records of the national register of homicides, these issues be studied comprehensively on a continuing basis to provide for a sufficient longitudinal review and that these results be published annually.

Summary

1. Between 1961-80, the reported incidence of sexual assault child homicides rose from 2.9 to 7.2 per million children, or an increase of 148 per cent during this period.
2. Sexually motivated killings of children involved many who were very young including: 11 between 2-6 years, 29 between 7-11 years, 21 between 12-13 years and 25 between 14-15 years.
3. The most frequent ways that these children were killed were: strangling (34.6 per cent); beating (20.5 per cent); and suffocating (9.0 per cent).
4. Alcohol and/or drugs were reported to have been used by the perpetrators in about one in four of these deaths (23.1 per cent).
5. Weapons had been used in about a third of these deaths (29.2 per cent).
6. In relation to the total of all homicides involving children as victims, children age 15 and younger against whom sexual and assault homicides are committed are an especially vulnerable group. Over two in five (43.3 per cent) of all reported sexual assault homicides involve children in this age group.
7. The existing system for the classification of sexual assault homicides provides inadequate information about certain essential elements that are involved in the committing of these crimes.

References

Chapter 10: Children Who Were Killed

[1] Canada. Statistics Canada, Justice Statistics Division. *Homicide in Canada: A Historical Synopsis*. Ottawa: Department of Industry, Trade and Commerce, No. 4-2400-502, 1976, p. 196.

[2] *Ibid.*, p. 194.

[3] Parizeau, A. and D. Szabo, *The Canadian Criminal Justice System*. Lexington, Mass.: Lexington Books, 1977, p. 49.

[4] McDonald, L., *The Sociology of Law and Order*, Toronto: Methuen Publications, 1979, pp. 224 and 6.

[5] *Ibid.*, pp. 5, 6 and 250.

[6] *Ibid.*, p. 236.

[7] *Ibid.*, pp. 155, 175.

[8] Parizeau, A. and D. Szabo, *op. cit.*

[9] McDonald, L., *op. cit.*, p. 145.

[10] Canada. Statistics Canada. *Homicide in Canada*, *op. cit.*, p. 86.

[11] Gebhard, P.J., J.H. Gagnon, W.B. Pomeroy and C.V. Christenson, *Sex Offenders: An Analysis of Types*, New York: Harper and Row Publishers, 1965, pp. 168-9.

[12] *Ibid.*, pp. 193, 169.

[13] Cormier, B.M. and S.P. Simons, The Problem of the Dangerous Sexual Offender, *Canadian Psychiatric Association Journal*, 14, 329-35, 1969.

[14] West, D.J., C. Roy and F.L. Nichols, *Understanding Sexual Attacks*, London: Heinemann, 1978.

Part III

The Law

Chapter 11

Legal Status of the Child

The legal issues within the mandate of the Committee are complex, and have implications for the content and implementation of laws enacted at all levels of government. Providing an overview of the legal issues considered in this section of the Report, the Canadian legal response to the sexual abuse of children is examined in this chapter in relation to: the traditional policy of the law in treating children as a special class; the principles of law relating to child welfare and to young offenders; and the criminal law of sexual offences against children.

Children as a Special Class

The law has traditionally treated children as a special class[1] which competed with other social interests for legal protection, for instance, the autonomy of the family and the integrity of the trial process. As the findings given in this Report make clear, the manner in which these ostensibly conflicting aims have been resolved does not always provide optimal protection for children and youths against those who abuse and exploit them sexually.

The special legal status of children[2] in Canada is based primarily on three considerations: the special needs of children who, by reason of their age and immaturity, need the care and guidance of others in order to develop into healthy, responsible adults; the substantial vulnerabilities of children to persons older and in many senses more powerful than they; and the actual or presumed incapacity of children to perform certain legal acts of daily life. These special needs, substantial vulnerabilities and natural incapacities (all of which diminish to some extent as the child grows into adolescence and young adulthood) have as their legal consequence both the removal from the child of legal powers otherwise enjoyed by adults and, conversely, the imposition of special duties and responsibilities towards the child on members of society generally. Although the nature and extent of these duties towards children vary depending on the relationship between the child and the other person, a child's legal status is in one sense absolute since it affects all persons with whom the child deals.

Society has a vital interest in ensuring that its naturally weaker members are protected by legal safeguards against the naturally stronger, and particularly, that the welfare and advantage of its children and youths will be protected and fostered.

The conferring by the State of this special status is intended to promote the welfare and protection of young persons in two complementary ways: the legal incapacities and disabilities which the child possesses are imposed primarily for his or her own protection, while the various legal duties and responsibilities imposed on others towards the child raise the social interests in the nurturance and protection of children to a legal plane and, it is hoped, thereby strengthen them.

The justified concerns of society are manifested in many aspects of the child's life. In the areas of education, employment and medical care, to take only three examples, the statute books are rife with illustrations of how the law treats children as a special class, in recognition of their special needs and vulnerabilities. Similarly, by mandating state intervention and penal sanctions where transgressions are found to occur, the criminal law and the law of child welfare express, in different ways, the importance that society places on protecting children from abuse or exploitation. The policy of the law is not to deny that children from an early age have a developing sense of their own sexuality, but rather to ensure that this normal and healthy sexual development is not interfered with by others.

Several considerations combine to justify beyond question the role of legal intervention in this context:

1. The protection of children against abusive or exploitative interference with their bodily integrity;
2. The entitlement of young persons (backed up by such safeguards as the law can provide) to express their sexuality on an equal and genuinely consensual basis;[3]
3. The deterrence of others from violating the trust implicit in all adult-child relationships, by exploiting a child's emotional and sexual vulnerability, or by involving developmentally immature persons in sexual acts which they do not fully understand and to which they are unable to give an informed consent;[4] and
4. The deterrence of others from involving young persons in sexual acts, for example, anal or vaginal intercourse, that may be physically and emotionally harmful to the young person.

Concerning the issue of access by young persons to pornographic materials, other social interests come into play, and these are related to the law's policy of prohibiting interference with a young person's sexual development. Indiscriminate exposure to children of pornographic depictions may distort in an unhealthy way their perceptions of relations between the sexes and communicate an attitude whose impact, by reason of the child's impressionability, may have an effect out of all proportion to the social utility of allowing

them free expression. Further, the ready accessibility of pornography to young persons may serve to compromise the parental role in educating his or her child in sexual matters. The Committee believes that the most appropriate persons to determine how a child should be introduced to and instructed in matters of human sexuality are the child's parents and educators, not the purveyors of pornography. The ready accessibility of pornography to children is incompatible with this aim, since it has the consequence of allowing children to be exposed to influences to which their parents may well prefer them not to be exposed.The same considerations apply to the sale and distribution of pornography to children.[5]

Our review thus far has concerned how Canadian law, in recognition of the child's special needs, substantial vulnerabilities and natural incapacities, has clothed children with a special status which has legal implications for all persons who deal with the child, although these implications vary depending on the context. Of course, the needs, vulnerabilities and incapacities of children change and, to some extent, diminish as the child matures into adolescence, young adulthood, and eventually attains the age of majority. These developmental changes are reflected in corresponding changes in the young person's legal position. As Graveson has observed:[6]

> The picture of status cannot be painted in elemental colours of black and white. The common law of which status forms part demands a rich variety of intermediate shades conditioned by the specific function that each of its rules is designed to fulfill. Over so long a span of early human life subdivisions, each of which may perhaps constitute a status within the greater status of infancy, are inevitable . . . Within the general limits of infancy can be found the most illuminating instances of the relative and functional use of the concept of status.

The law has traditionally recognized that the span of life from birth to adulthood is too extensive to be treated as a single legal unit, and that distinctions concerning both the legal capacities of children and the legal duties and responsibilities towards children need to be made between children of different ages and at different stages of development. For the most part, these legal distinctions have been based on whether the child has attained certain ages below that of majority. The general body of law of any legal system cannot deal with society as individuals, but only with classes of individuals whose membership in a given class can be determined by well-defined distinctions, for example, by a person's attainment or non-attainment of a certain age. The child's legal personality at a given age is intended roughly to correspond to the level of intellectual, maturational and emotional development displayed generally by children of that age, and is of necessity, coloured by each society's contemporary social views of childhood.

An example of social and legal conceptions of childhood in eighteenth-century England is provided in the writings of Sir William Blackstone,[7] a highly influential jurist of that period. According to Blackstone, a boy had the capacity to "swear allegiance" at 12 years-old, to marry at 14, and to be an executor of an estate at 17. A girl might be betrothed at seven years-old, at

nine was entitled to dower, at 12 could marry, at 14 could select her guardian, and at 17 could become executrix of an estate. The various capacities of the child of which Blackstone wrote have their contemporary counterparts in Canadian law at both the federal and the provincial levels. Statutes differ, for example, even as to when a child ceases to be a "child" in various contexts. The sharp variations in the ages selected for certain purposes in different jurisdictions attest to the complexity of the issues in the whole area of children's law.

Within the general body of the law dealing with young persons, several specific issues emerge which are directly relevant to the issue of child sexual abuse and exploitation. As each of these issues is dealt with in other chapters in Part III of the Report, only an introduction is provided here. One such issue is the age at which a young person ceases to be a "child" for the purposes of child welfare proceedings, and thus, in general, ceases to be eligible for the protective services and ameliorative intervention offered by the child welfare system in each province and territory. Another issue is the so-called "age of criminal responsibility", which is the age below which a child is, due to his or her natural or presumed incapacity, exempted from criminal responsibility (although the child's actions may prompt the intervention of the child welfare authorities). A third, related issue is the age at which a young person becomes an adult in the eyes of the criminal law, and henceforth, becomes subject to the procedures and penalties of the ordinary criminal court system.

Perhaps the most difficult legal issue is whether the criminal law strikes an appropriate balance between protecting children from sexual abuse and exploitation, on the one hand, and permitting the sexual expression of young persons as they proceed through adolescence into young adulthood, on the other. Where young children are involved, there can be no doubt in the Committee's judgment that the proscriptions of the law are amply justified, and attempts by some to champion the sexual rights of children and youths to engage in sex with whomever they please are transparent, dangerous and intellectually dishonest. The Canadian criminal law of sexual offences has traditionally prohibited certain sexual acts when engaged in with a person under certain ages (notably, 14), notwithstanding that the younger person may have in fact consented to the act. Recent criminal law proposals blur these distinctions, and would confer on young persons more sexual autonomy than they have traditionally enjoyed. The implications of these proposals (some of which are now part of Canadian law) are considered later in the Report.

Although the policy of the law in providing children and youths with protection against sexual abuse and exploitation is surely justified, there is a related legal area where, in the Committee's view, the law's approach to children is inappropriate: the legal principles which apply to children's evidence. In prosecutions of sexual offences against children, the testimony of the child victim typically is crucial to proving that the offence was committed. The legal issues concerning children's evidence are complex and are reviewed elsewhere; it suffices to state here that the law places serious fetters both on the legal effect of the child's testimony, if received. In the Committee's judgment,

upholding the integrity of the trial process and the conscientious removal of the legal fetters which prevent children from speaking effectively on their own behalf are not incompatible aims.

The difficult social and legal issues which arise when child sexual abuse occurs within the family also illustrate the nature of the problems of status. Just as the law, for important reasons of public policy, confers on children a protective legal status, so does it confer on the parties to a marriage that of the legal status of husband and wife, in order to make that relation a firmer foundation for society. Until recently, for example, there were some sexual offences for which the wife or husband of a person charged with such an offence was neither competent nor compellable to testify against his or her spouse, regardless of the potential relevance of the spouse's testimony.[8] Moreover, laws at both the federal and the provincial levels continue to prevent a spouse from being compelled to disclose communications made to him or her by the other spouse during their marriage, even where such a disclosure might be crucial in the investigation of an allegation of child sexual abuse. These exceptions have been justified historically as protecting the sanctity of marriage; their current appropriateness is commented upon later.

Reference has been made to the fact that the young person's legal status is in one sense absolute, since it affects (although in varying degrees) everyone with whom the young person deals. The young person also has, however, a separate and additional status in relation to his or her parents. Towards them, he or she has the legal status of their child, and they have the corresponding legal status of parents, with all the rights, duties and responsibilities that this relationship implies. Speaking generally, the duties of parental status are fixed in nature, though unlimited in number and frequently in duration. There is obviously no specific number of occasions on which a parent is required to act parentally in favour of his or her child. In this regard, the law allows parents a good deal of discretion concerning how these responsibilities will be discharged.

On principle, society will intervene only when a child's parent or guardian acts in a manner that is demonstrably adverse to the child's welfare. The sexual abuse or exploitation of a child by a person responsible for the child's care is a contemptible violation of family and public trust, and is viewed by the law as warranting immediate and effective state intervention. Depending on the circumstances, the child may be considered to be in such jeopardy as to require the temporary or permanent abrogation of the parent-child relationship, and the substitution of another, more propitious legal relationship in its place.

The Child in Need of Protection

That parents will conscientiously provide for their children's needs, and respect and safeguard their children's vulnerabilities, is the central assumption underlying the legally conferred status of parent and child. When a child is sexually abused or exploited by his or her parent, or by a person otherwise

under a duty of familial care towards the child, the law authorizes an agency of the State to intercede on the child's behalf. Each Canadian province and territory has legislation which authorizes state intervention into the affairs of a family in which a child's welfare has been placed in jeopardy. These statutes variously define, often in very broad terms, the situations that will render a child "in need of protection" so far as the law is concerned, and outline the steps which may be taken to ensure the child's well-being. In each jurisdiction, a child who is suspected to be in need of protection may be "apprehended" by an official of a child protection agency. The child may be kept in care pending a judicial hearing to determine whether the child is in need of protection and, if so, the most appropriate legal means of ensuring the child's security and well-being. Although child sexual abuse is not identified in all jurisdictions as a specific harm rendering a child in need of protection, the legislation in all jurisdictions is sufficiently broad to subsume it. There is no question that a child who is sexually abused or exploited in his or her family context is "in need of protection" within the legal meaning of that phrase.

The eligibility of a young person for the protective services and ameliorative intervention afforded by child welfare agencies is contingent upon the young person's age. Legislation in each province and territory defines a "child" as a person who has yet to attain a given age, thereby delineating the class of persons at whose protection and welfare the legislation is primarily directed. For these purposes a "child" in British Columbia is a person under 19; in Prince Edward Island, Quebec, Manitoba, Alberta and the Yukon, a person under 18; and in all other provinces and territories, a person under 16. These variations betray something of the conceptual, if not the economic, arbitrariness of using age as the criterion to determine whether a person should be entitled to the benefits of a particular legal status.

Reference was made earlier to the inevitable tension between the firm policy of the law in protecting the welfare of children, on the one hand, and its policy of safeguarding the autonomy of family life, on the other. In cases of intra-familial sexual abuse, the latter consideration is subordinated to the former; the promotion of the child's physical and emotional well-being is considered paramount. Even so, the strength of the legal presumption in favour of protecting the parent-child relationship is such as to exert an appreciable influence in many areas of the child welfare system. The following principles, quoted from a 1979 child protection case, were intended to be representative of judicial attitudes on this subject:[9]

1. That by nature and tradition we live in a familial society founded on blood ties and natural affection which has created a legal presumption that the child belongs with its natural parent.

2. That this presumption may in the individual instance be rebutted only by the most serious reasons, in which case the State is justified in intervening and severing that natural parent-child relationship.

3. That the point at which the State is so justified in intervening is that point at which in the judgment of the Court, the child is being subjected to conditions or treatment which cannot be tolerated.

4. That the "best interest" rule applicable in interparental custody issues, whether under the Divorce Act, Family Law Reform, or similar legislation, differs from the criteria applicable in custody issues as between the parent and the State.

5. That in determining State intervention, the family environment must be examined in its particular context, as opposed to traditional "middle class" standards, and in the light of whatever potential it might have.

6. That the potential of the family is to be assessed having regard to whatever support and assistance may be offered by contemporary social service agencies, whether government or private, whose role, and indeed, whose duty it is to provide those support services.

7. That the proper role of professional social service workers is to expend their expertise in delivering that support, to inform the Court of the availability and limits of those resources, and not to pass subjective judgments with respect to disposition.

8. That the Court should intervene, and declare the natural right of the parent to the custody of the child be forfeited, severing the parent-child relationship, and grant permanent custody to the Director, only when the positive resources of the State have proved to be ineffective or inadequate, and the health of the child, whether physical or emotional, is in apprehended jeopardy.

As is implicit in these judicial comments, there are two basic issues that call for legal determination at a child protection hearing. First, is the child in need of protection or, to put the issue in more broadly legal terms, have the agencies of the State justified the necessity of intervening into the life of the child and of his or her family? And second, if so, what form should this remedial state intervention take in relation to the child and his or her family?[10] Where a child is found to be in need of protection, the legal disposition of the matter may take three basic forms: the child may remain at home, subject to the supervision of a child welfare agency (and subject also to the removal of the offender from the home), or the child may be removed from the home, either temporarily or permanently.[11] In its role as the authorized agent of the State in matters concerning the welfare of young persons, the child welfare agency is responsible for providing the broad range of custodial, medical and therapeutic services necessary to the carrying out of its mandate.

Notwithstanding the relative clarity of the legal principles pertaining to intra-familial child sexual abuse, the proper, day-to-day application of these principles by child protection workers to the unique facts of a particular case is, to understate the matter, a complex and difficult undertaking. The Committee's review of provincial child welfare legislation and its research findings concerning these issues are presented in Part V of the Report, *Child Protection Services*.

One of the principal purposes of provincial child welfare law is to protect children and youths against sexual abuse by persons who have a special duty of familial care towards them, for example, the child's parents or guardians. The nature of official interventions by child welfare authorities on the child's behalf is influenced by a recognition of the special problems posed by child sexual abuse in a family context. The institutional emphasis here is on protecting and fostering the welfare of the victimized child, rather than on punishing the abuser. In contrast, the criminal law has a wider and more denunciatory role to play where child sexual abuse or exploitation is found to occur, whether within or outside the family. The role of the criminal law in this context is considered in Chapter 12, *The Sexual Offences*.

References

Chapter 11: Legal Status of the Child

[1] Several of the issues reviewed here have been adapted to the Canadian context from Graveson, *Status in the Common Law* (London: University of London, The Athlone Press 1953).

[2] Section 91(24) of the *Constitution Act, 1867*, confers upon the federal Parliament the power to make laws in relation to "Indians, and Lands reserved for the Indians." On the special constitutional status of Indians (and hence of Indian children) in Canadian law, see Hogg, *Constitutional Law of Canada* (Toronto: Carswell, 1977) at 383-90).

[3] Kempe, *Sexual Abuse, Another Hidden Pediatric Problem: The 1977 C. Anderson Aldrich Lecture* (1978), 62 Pediatrics 382.

[4] *Ibid.*

[5] Law Reform Commission of Canada, *Working Paper 10, Limits of Criminal Law* (Ottawa: Information Canada, 1975).

[6] Graveson, *Status in the Common Law* (London: University of London, The Athlone Press, 1953) at 3,20,21.

[7] Blackstone, *Commentaries on the Laws of England* (1st ed. Oxford: Clarendon Press, 1769), at 451.

[8] Namely, the former offences of indecent assault on a female and indecent assault on a male. A January, 1983 amendment to the *Canada Evidence Act* makes the wife or husband of a person charged with a sexual offence competent and compellable to testify against his or her spouse in virtually all instances.

[9] *In the Matter of Charles Littner et al.* unreported. June 3, 1979 (P.E.I.S.C. Fam. Div.).

[10] Bala, Lilles, and Thompson, *Canadian Children's Law* (Toronto: Butterworths, 1982) at 144.

[11] *Ibid.*

Chapter 12

The Sexual Offences

Canadian legislators have always considered that the sexual abuse or exploitation of young persons is a matter of serious public concern which amply justifies the sanctions of the criminal law. This concern is borne out by the history of the Canadian criminal law of sexual offences since the mid-eighteenth century. This chapter provides an overview of the major sexual offences in Canadian law,[1] including some recently repealed, and their evolution. Offences related to prostitution and obscenity are presented elsewhere in the Report.

Classification of Offences

The result of the historical development of the major sexual offences is an unevenness in the protection afforded children. Some of this is due to the limitations of the concepts used in the offences, and some is due to the fact that some offences were developed without any particular consideration being given to children as victims. An example of the former is the inappropriateness of the assault model to deal with invitations to young children to touch the genitals of other persons. An example of the latter is the offence of incest which prohibits sexual intercourse between persons within certain blood relationships, but does not exempt a young victim, though the court is not required to impose any punishment on a convicted female who acted only under restraint, duress or fear.

Many of the sexual offences are act-specific; this is consistent with the focus by the Committee in its research on specific acts which, however, unlike the offences in the *Criminal Code*, are not likely to change over the years. Changes in the offences over time are understandable, as are changes in charging practices and in judicial attitudes. The danger is that the objective of providing effective protection may be lost sight of in the complex process of legislative amendment. For example, as the Committee's Recommendations demonstrate, act-specific offences can apply equally to persons of both sexes. However, it is unrealistic to insist on this where comprehensive research discloses that the specific conduct involved is committed exclusively by persons of one sex against persons of the other sex. In these cases, the aim of sexual equality in the application of the offence serves no useful purpose.

Some offences are non-specific and potentially include wide areas of human sexual behaviour. Despite their sweep, they do not necessarily provide adequate protection for either adults or children, since their very generality may compel judicial as well as legislative intervention. There is a danger that behaviour which should be prohibited will not be included. Such terms as gross indecency obscure the nature of the conduct involved, which makes it almost impossible to know whether effective protection is being provided to children in all circumstances where it is generally agreed that it should be.

The sexual offences presented in this chapter are divided into the following categories:

1. *Sexual Touching*. This category is divided into two parts. Some of the offences may fall within either part, depending upon the conduct complained of.[2] (One of the offences included in this category prohibits procuring a female to have illicit sexual intercourse with a person other than the procurer).

   - *Non-consensual Sexual Touching*, including intercourse with females, males and animals. This part includes: rape; the sexual assaults*; indecent assault on a female; indecent assault on a male; buggery* and bestiality*; and incest*.

   - *Consensual Sexual Touching*, including intercourse with young females and males, as well as procuring such intercourse. This part includes: sexual assaults* and indecent assaults, where an otherwise valid consent is given by a capable person under the age of 14; buggery*; incest*; sexual intercourse with a step-daughter, foster daughter or female ward*; sexual intercourse by an employer with a female employee under 21*; sexual intercourse with a female under 14 and sexual intercourse with a female 14 or 15*; sexual intercourse with a feeble-minded female; seduction of a female 16 or 17*; seduction under the promise of marriage*; and parent or guardian procuring defilement*.

2. *Other Sexual Behaviour*. These offences are not act-specific and potentially include a wide range of sexual behaviour. This category includes: gross indecency*; indecent acts*; and contributing to juvenile delinquency*.

3. *Use of Premises*. These offences are concerned with ensuring that premises are not used to facilitate the commission of sexual offences, for activity with young females similar to that which occurs in a bawdy-house, or for activity that endangers the morals of children. This category includes: corrupting children*, owner, occupier or manager of premises permitting defilement of a female under 18*, and vagrancy (loitering by convicted sexual offenders in or near certain locations)*.

In the above categories, offences currently in the *Criminal Code* are marked with an asterisk (*). Offences recently repealed are included because of their historical importance and because they were in force when the Committee undertook the collection of information on the sexual offences. However, **while the Committee examined the offences within the framework of the *Criminal Code*, its research focussed directly on the specific acts involved,**

Table 12.1

The Major Sexual Offences in Canada, as of January 4, 1983

Criminal Code Offence	Effect of January, 1983 Amendments			
	Maximum Sentence	Offence Introduced	Offence Unchanged	Offence Modified
Sexual Assault (section 246.1)	10 years' imprisonment or 6 months' imprisonment	X		
Sexual Assault with Threats, Weapon, or Causing Bodily Harm (section 246.2)	14 years' imprisonment	X		
Aggravated Sexual Assault (section 246.3)	life imprisonment	X		
Buggery and Bestiality (section 155)	14 years' imprisonment		X	
Incest (section 150)	14 years' imprisonment			Corroboration no longer required.
Sexual Intercourse with Step-Daughter, Foster Daughter, or Female Ward (section 153(1)(a))	2 years' imprisonment			Corroboration no longer required.
Sexual Intercourse with Female Employee Under 21 (section 153(1)(b))	2 years' imprisonment			Corroboration no longer required. Burden of proof provision & evidentiary presumption repealed. Defence of subsequent marriage repealed.
Sexual Intercourse with Female under 14 (section 146(1))	life imprisonment		X	
Sexual Intercourse with Female 14 or 15 (section 146(2))	5 years' imprisonment			Burden of proof provision & evidentiary presumption repealed.

Table 12.1 (continued)

The Major Sexual Offences in Canada, as of January 4, 1983

Criminal Code Offence	Effect of January, 1983 Amendments			
	Maximum Sentence	Offence Introduced	Offence Unchanged	Offence Modified
Seduction of Female 16 or 17 (section 151)	2 years' imprisonment			Same as above. Also, corroboration no longer required.
Seduction Under Promise of Marriage (Section 152)	2 years' imprisonment			Corroboration no longer required. Burden of proof provision repealed. Defence of subsequent marriage repealed.
Parent or Guardian Procuring Defilement (section 166)	14 years' if female is under 14			Corroboration no longer required.
	5 years' if female is 14 or older			
Gross Indecency (section 157)	5 years' imprisonment			Corroboration no longer required.
Indecent Act (section 169)	6 months' imprisonment		X	
Contributing to Juvenile Delinquency (section 33 of *Juvenile Delinquents Act*)	2 years' imprisonment		X	
Corrupting Children (section 168)	2 years' imprisonment		X	
Owner or Manager of Premises Permitting Defilement of Female under 18 (section 167)	5 years' imprisonment		X	
Vagrancy (section 175(1)(e))	6 months' imprisonment		X	

which are not likely to change. The result is that the findings obtained remain useful in connection with offences recently enacted, and indicate what additional changes could be made to improve protection for children and youths.

The sexual offences should be considered in the light of what has already been said about the status of the child (Chapter 11, *Legal Status of the Child*). From this point of view, there is no doubt that the *Criminal Code* attempts to provide protection for children and youths through certain specific offences. The problem is that it does not give any particular consideration to the position of children as victims of any sexual offence. There is an implicit assumption that the sexual offences operate in the same way regardless of whether the victims are adults or children. The information collected by the Committee, and presented elsewhere in this Report, belies this assumption.

Non-Consensual Sexual Touching

Rape

The former offences of rape and attempted rape were repealed in January, 1983 and were replaced by sexual assault offences which do not require corroboration. Under the former section 143 of the *Criminal Code*, a male person committed rape when he had sexual intercourse with a female person, who was not his wife, without her consent, or with her "consent" if it was extorted by threats or fear of bodily harm, or was obtained by impersonating her husband or by false and fraudulent representations as to the nature and quality of the act. Although the act of sexual intercourse was an element of this offence, it was the circumstances which surrounded that act and the accused's awareness of those circumstances which distinguished consensual sexual intercourse from the offence of rape. The accused must have intended to have sexual intercourse with a woman, knowing that she was not his wife and that she did not consent, or being reckless as to whether she consented.[3] A person who committed rape was liable to imprisonment for life.[4] The offence of attempted rape carried a maximum punishment of imprisonment for 10 years.[5]

Rape had been a crime since the earliest development of the common law,[6] and punishable by death for much of English and Canadian legal history.[7] In 1758, the Nova Scotia Assembly (Nova Scotia at that time also included what are now New Brunswick and Prince Edward Island) enacted the death penalty for rape,[8] but this was eventually reduced to imprisonment for life or for any term not less than seven years.[9] In 1841, the Province of Canada enacted that every person convicted of rape "shall suffer death as a felon".[10] The death penalty for rape was also prescribed by the legislature of New Brunswick prior to Confederation.[11] In Prince Edward Island, the death penalty for rape was abolished in 1861 and replaced by imprisonment for up to 21 years, with or without hard labour, with the male offender also liable "to be once, twice or thrice publicly or privately whipped."[12]

In 1869, rape was made a federal criminal offence punishable by death.[13] An alternative punishment of imprisonment for life, or for any term not less than seven years, was sanctioned three years later.[14] The 1892 *Criminal Code*

provided for the first time in Canada a statutory definition of rape, which clarified the issues of lack of consent and the degree of physical contact required between the male and female sexual organs.[15] It also codified the rule at common law that no male under 14 could in law commit this offence.[16] The definition of rape in Canadian law remained essentially unchanged from 1892 until the repeal of the rape offence in January, 1983.

A provision for whipping convicted rapists was added in 1921.[17] Under the law as it stood previously, only an offender convicted of attempted rape could be whipped.[18] Although convicted rapists were liable to the death penalty until 1955,[19] the sentence of death was imposed for this offence in only one case,[20] and in that instance, the death sentence was commuted to 20 years' imprisonment, with lashes.[21] The provision for whipping offenders convicted of rape or attempted rape was repealed effective July 15, 1972, as part of the abolition of corporal punishment of male criminal offenders.[22]

Rape was never an offence for which corroboration was required by statute, although it was subject to the firm rule of practice that caution was required before convicting the accused on the uncorroborated testimony of the complainant.[23] As part of the 1955 *Criminal Code* revision, the common law rule of practice that it was unsafe for the jury to find the accused guilty on the basis of the complainant's uncorroborated testimony, but that they were entitled to do so if satisfied beyond a reasonable doubt that it was true, was codified and made applicable to the offence of rape.[24] Although this provision made corroboration of the complainant's sole testimony not strictly necessary, the trial judge was still obliged to caution the jury in appropriate cases.[25] The requirement of corroboration where the complainant gives unsworn testimony remained intact.[26]

The above-mentioned statutory "corroboration warning" rule was repealed in 1976[27] and replaced with a provision outlining the conditions under which a complainant could be asked about her prior sexual conduct with persons other than the accused.[28] Section 142 of the *Criminal Code*, which was repealed in January, 1983, provided:

> 142. (1) Where an accused is charged with an offence under section 144 or 145 or subsection 146(1) or 149(1), no question shall be asked by or on behalf of the accused as to the sexual conduct of the complainant with a person other than the accused unless
>
> (a) reasonable notice in writing has been given to the prosecutor by or on behalf of the accused of his intention to ask such question together with particulars of the evidence sought to be adduced by such question and a copy of such notice has been filed with the clerk of the court; and
>
> (b) the judge, magistrate or justice, after holding a hearing in camera in the absence of the jury, if any, is satisfied that the weight of the evidence is such that to exclude it would prevent the making of a just determination of an issue of fact in the proceedings, including the credibility of the complainant.
>
> (2) The notice given under paragraph (1)(a) and the evidence taken, the information given or the representations made at a hearing referred to in paragraph (1)(b) shall not be published in any newspaper or broadcast.

(3) Every one who, without lawful excuse the proof of which lies upon him, contravenes subsection (2) is guilty of an offence punishable on summary conviction.

(4) In this section "newspaper" has the same meaning as it has in section 261.

(5) In this section and in section 442, "complainant" means the person against whom it is alleged that the offence was committed.

In *Forsythe v. The Queen*,[29] the Supreme Court of Canada held that the intent of this provision was to balance the potential trauma and embarrassment caused to the complainant by an inquiry into her past sexual conduct with persons other than the accused, against the right of an accused to make a full answer and defence to the charge. Implicit in this statutory provision was the recognition that, at least in some instances,[30] the past sexual conduct of the complainant with persons other than the accused may be highly relevant to determining the truthfulness of her allegation. Chief Justice Laskin, in commenting on this "balancing of interests", noted:[31]

> The gain of the complainant is that whereas she may now be required to answer the question in public she may not have to do so if the Court rules against it, although she may have to submit to the question in private. As for the accused, whereas he could formerly put the question in public without necessarily being entitled to an answer, he now has the right of answer and the right to contradict it if the Court rules in his favour in the *in camera* hearing.

As part of the same enactment, protection from identification in any newspaper or broadcast was afforded to victims of rape, attempted rape, indecent assault on a female, or sexual intercourse with a female under 14.[32]

Sexual Assaults

On January 4, 1983, a number of amendments to the *Criminal Code* sexual offences were proclaimed in force. They introduced sexual assault offences which can be committed by a male or a female against a male or a female; the maximum punishment available under each offence does not depend on the sex of the complainant (unlike the former offences of indecent assault on a male and indecent assault on a female). Further, a husband or wife may be convicted of sexually assaulting his or her spouse under each of the sexual assault offences, regardless of whether the spouses were living together at the time of the sexual assault.

Section 246.1 of the *Criminal Code* now provides that "every one who commits a sexual assault is guilty of (a) an indictable offence and is liable to imprisonment for ten years; or (b) an offence punishable on summary conviction".[33] This offence is procedurally "hybrid": the Crown has a discretion to proceed either by indictment or summarily, and hence, can directly influence the maximum punishment to which a person convicted of this offence will be liable. The conferring of this discretion is largely explained by the wide range

of unwanted sexual touchings comprehended by the term "sexual assault". Although "sexual assault" is not defined in the *Criminal Code*, it will likely be taken to mean either an assault[34] directed at a person's sexual organs, or an assault which, from the circumstances, was clearly sexually motivated. Accordingly, it could subsume everything from a threatened sexual advance[35] or a pinch on the behind to unwanted sexual intercourse unaccompanied by overt threats or the use or threatened use of a weapon. The ambit of the "sexual assault" offence will be determined by judicial interpretation, as cases of sexual assault are tried, and the results of those trials appealed, in Canadian courts.

Section 246.2 of the *Criminal Code* provides that:

> 246.2 Every one who, in committing a sexual assault,
>
> (a) carries, uses or threatens to use a weapon or an imitation thereof,
>
> (b) threatens to cause bodily harm to a person other than the complainant,
>
> (c) causes bodily harm to the complainant, or
>
> (d) is a party to the offence with any other person,
>
> is guilty of an indictable offence and is liable to imprisonment for fourteen years.

"Bodily harm" is defined as "any hurt or injury to the complainant that interferes with his or her health or comfort and that is more than merely transient or trifling in nature."[36]

This offence is a more serious form of "sexual assault" and is committed when a sexual assault is attended by one of the circumstances outlined in sections 246.2(a) through (d). Sections 246.2(a) and (b) deal primarily with situations in which a complainant's acquiescence in or submission to the sexual act is induced by any of the factors mentioned, while section 246.2(c) is applicable where the sexual assault results in "bodily harm" to the complainant. The definition of "bodily harm" provided in section 246.1(2) is somewhat vague; its proper legal meaning in various factual contexts will doubtless be clarified by judicial interpretation. The section 246.2(d) provision is contravened where a sexual assault is perpetrated by more than one person, for example, the situation formerly referred to as "gang rape".

Section 246.3 of the *Criminal Code* provides that:

> 246.3 (1) Every one commits an aggravated sexual assault who, in committing a sexual assault, wounds, maims, disfigures or endangers the life of the complainant.
>
> (2) Every one who commits an aggravated sexual assault is guilty of an indictable offence and is liable to imprisonment for life.

This is the most serious form of sexual assault.

Section 244 (3) of the *Criminal Code* provides that:

> no consent is obtained where the complainant submits or does not resist by reason of
>
> (a) the application of force to the complainant or to a person other than the complainant;
>
> (b) threats or fear of the application of force to the complainant or to a person other than the complainant;
>
> (c) fraud; or
>
> (d) the exercise of authority.

Where the Crown proves that the complainant submitted to or did not resist the accused by reason of one of these factors, the complainant's acquiescence is not considered a valid consent in law. Accordingly, an accused in this instance is guilty of a form of sexual assault, depending on the additional circumstances which attended the assault. The "vitiating" factors in section 244(3), especially those in sections 244(3)(c) and (d), are very broad and will require judicial elucidation in the case law.

The legal treatment of the consent of young persons to sexual acts was also changed by the 1983 amendments to the *Criminal Code*. Section 246.1(2) of the *Criminal Code* now provides:

> 246.1(2) Where an accused is charged with an offence under subsection (1) or section 246.2 or 246.3 in respect of a person under the age of fourteen years, it is not a defence that the complainant consented to the activity that forms the subject matter of the charge unless the accused is less than three years older than the complainant.

Accordingly, where a complainant is under 14, is capable of and does give a *de facto* consent to sexual activity with a person more than three years older, the young person's consent is nevertheless not a defence to the accused with respect to any of the "sexual assault" offences.

Where, however, the accused is less than three years older than the complainant, the complainant's consent to the sexual act is recognized by the law and serves to exonerate the accused. In addition, a capable person under 14 apparently may give a valid legal consent not only to being sexually touched by a person less than three years older, but also to being threatened, harmed, wounded, maimed or disfigured by that person. The applicability of this "less than three years older" defence to the more serious sexual assault offences in sections 246.2 and 246.3 can only be regarded in the Committee's judgment as a serious legislative oversight.

Although it is clear that at common law there are limits to the degree of physical harm to which a person may give a valid consent, where the line is to be drawn is unclear.[37] This problem arises most acutely in the context of sado-masochistic behaviour, in which the "assailant", for purposes of sexual gratification, visits some degree of violence on his or her willing partner. The leading

decision on the legal principles applicable to this form of conduct is the English case of *R. v. Donovan*,[38] in which the Court of Criminal Appeal held that, as a general rule, it is unlawful to beat another person with such a degree of violence that the infliction of bodily harm is a probable consequence, regardless of the consent of the complainant, and that sado-masochistic behaviour does not fall within any of the well-established exceptions to this rule. "Bodily harm" in this context should be taken to mean any hurt or injury calculated to interfere with the health or comfort of the complainant. The hurt or injury need not be permanent, but must be more than merely transient and trifling. These principles have been explicitly adopted by the Ontario Court of Appeal[39] and by the Supreme Court of Canada,[40] and more recently, have been acknowledged by the Quebec Court of Appeal.[41] They conflict with the statutory defence which now may be available where a capable person under 14 consents to a harmful sexual touching.[42]

An implied element in the sexual assault offence is that the accused, in committing a sexual assault, either knew that the complainant did not consent, or was reckless or indifferent to whether he or she consented. A situation may arise (albeit rarely, in light of the Committee's findings) in which an accused honestly believes that a complainant is consenting to the sexual act, while the latter is in fact withholding consent. Section 244(4) of the *Criminal Code* provides:

> 244. (4) Where an accused alleges that he believed that the complainant consented to the conduct that is the subject-matter of the charge, a judge, if satisfied that there is sufficient evidence and that, if believed by the jury, the evidence would constitute a defence, shall instruct the jury, when reviewing all the evidence relating to the determination of the honesty of the accused's belief, to consider the presence or absence of reasonable grounds for that belief.

This provision makes it clear that the accused's defence of honest belief in the complainant's consent must, pragmatically if not theoretically, have some objective basis in fact and obliges the trial judge to charge the jury accordingly.

Indecent Assault on a Female

The former offence of indecent assault on a female was repealed in January, 1983 and was replaced by sexual assault offences which do not require corroboration. Under the former section 149(1) of the *Criminal Code*, "every one who indecently assaults a female person is guilty of an indictable offence and is liable to imprisonment for five years." An indecent assault was an assault with an element of indecency and, accordingly, the offence of indecent assault on a female was committed where a person touched, attempted or threatened to touch a female person indecently and without her consent, or with her "consent" if it was obtained by false and fraudulent representations as to the nature and quality of the act. The consent of a female under 14 to the act for which the accused was charged was no defence.[43]

The legal concept of an "assault" causes difficulty where an accused invites a child to touch him, but neither touches nor threatens to touch the child in return. In these circumstances, English and Canadian courts have held that, since there is no assault, the question of indecent assault does not arise. In *Fairclough v. Whipp*[44], the accused was urinating by a river bank where four girls, varying in age from six to nine, were playing. As one of the girls passed him, he turned to her with his penis exposed and said, "Touch it." The girl did so, after which the accused departed. On his trial for indecent assault, the accused was acquitted. The English court reasoned:[45]

> An assault can be constituted, without there being a battery, for instance, by a threatening gesture or a threat to use violence against a person, but [there is no authority] which says that where one person invites another person to touch him that can be said to be an assault. The question of consent or non-consent only arises if there is something which can be called an assault and, without consent, would be an assault.

The reasoning employed in *Fairclough v. Whipp*[46], namely, that an invitation to someone to touch the invitor cannot, by itself, amount to an assault, has been adopted by Canadian courts. In *R. v. McCallum*,[47] the male accused was charged with indecent assault on a female. He had appeared nude before a young girl and had invited her to masturbate him, which she apparently did. The court held that where an accused merely invites another person to touch his private parts, but does not himself touch that person or threaten him or her by acts or gestures, there is no *assault* and therefore no *indecent* assault.[48] It is apparent that in these sorts of cases, the legal concept of an "assault" fails to provide an effective framework for sanctioning inappropriate sexual conduct between adults and children.[49]

The offence of indecent assault on a female was introduced into Canadian law in 1869,[50] substantially duplicating English legislation enacted eight years earlier.[51] It shared the same section as the offence of attempted carnal knowledge of a girl under 12; both offences carried a punishment of imprisonment for any term less than two years, with or without hard labour or whipping. The provision for "hard labour" was removed in 1886.[52]

Several significant changes were introduced in 1890.[53] The offences of indecent assault on a female and unlawful carnal knowledge were given separate sections, and the penalty for each was increased to a maximum of two years' imprisonment, thereby rendering the offender liable to be imprisoned in a federal penitentiary.[54] It was further enacted that a "child of tender years" could give evidence with respect to the offences of indecent assault on a female and unlawful carnal knowledge, notwithstanding that it was not given upon oath, if the child was "possessed of sufficient intelligence to justify the reception of the evidence" and understood "the duty of speaking the truth".[55] Under the common law, it had been established in the late eighteenth century that no testimony could legally be received except upon oath.[56] This statutory amendment rendered admissible testimony of children that would otherwise have been inadmissible. It was unquestionably motivated by a recognition that disallowing young girls to testify because they did not understand the nature of an oath

would effectively deny them much of the protection the substantive criminal law sought to afford. As a counter-balancing measure, it was further provided that evidence thus admitted had to be corroborated by evidence implicating the accused.[57]

Another amendment aimed directly at providing additional protection for children was enacted in 1890. The amendment provided that "it is no defence to a charge or indictment for any indecent assault on a young person under the age of 14 years to prove that he or she consented to the act of indecency",[58] and complemented the increased protection from sexual intercourse that was afforded in the same enactment to girls under the age of 14.[59]

In the 1892 *Criminal Code*, the offence of indecent assault on a female was widened to proscribe acts where the female's consent was obtained by false and fraudulent representations as to the nature and quality of the act.[60] No significant changes in this offence occurred between 1892 and the 1955 *Criminal Code* revision.

Prior to 1955, it had been authoritatively held that there was no legal requirement for corroboration in cases of indecent assault.[61] Even so, and especially with respect to the sworn evidence of children in sexual cases, the caveat that it was unsafe to convict on the uncorroborated evidence of the complainant applied.[62] As part of the 1955 *Criminal Code* revision, the common law rule of practice that it was unsafe for the jury to find the accused guilty on the basis of the complainant's uncorroborated testimony, but that they were entitled to do so if satisfied beyond a reasonable doubt that it was true, was codified and made applicable to the offence of indecent assault.[63] This provision was repealed in 1976;[64] under the present law, the judge is prohibited from instructing the jury that it is unsafe to find the accused guilty in the absence of corroboration.[65]

The maximum term of imprisonment for the offence of indecent assault was raised in 1955 from two years to five years and the provision for whipping retained.[66] The whipping provision was repealed effective July 15, 1972, as part of the abolition of corporal punishment of male criminal offenders.[67] (The sexual assault offences which replaced this offence have already been described).

Indecent Assault on a Male

Section 156 of the *Criminal Code*, which contained the former offence of indecent assault on a male, was repealed in January, 1983 and was replaced by sexual assault offences. Under the former section 156 "every male person who assaults another person with intent to commit buggery or who indecently assaults another male person is guilty of an indictable offence and is liable to imprisonment for 10 years". This section created two distinct offences: assault with intent to commit buggery and indecent assault on a male. With respect to the former, although the term "buggery" is not defined in the *Code*, it is taken to mean sexual intercourse *per anum* by a man with a man or a woman. The completed act of buggery is a separate offence.[68]

The offence of indecent assault on a male was formerly the only exclusively homosexual offence in Canadian criminal law. An indecent assault was an assault with an element of indecency and, accordingly, the offence of indecent assault on a male was committed where a male person touched, attempted or threatened to touch another male person indecently and without the latter's consent. The consent of a person under 14 was not a defence to either of the offences in section 156.

The offence of assault with intent to commit buggery existed in pre-Confederation criminal law[69] and, together with the offences of attempted buggery and indecent assault on a male, first appeared as a federal criminal offence in 1869, with a maximum punishment of 10 years' imprisonment with or without hard labour.[70] These offences were enacted in somewhat different form in 1886, the offence of indecent assault male being limited to assaults by males on other males, and the offence of assault with intent to commit buggery being clarified as applying either to male or to female victims.[71]

In 1890, an amendment aimed directly at providing additional protection for children was enacted. The amendment provided that "it is no defence to a charge or indictment for any indecent assault on a young person under the age of 14 years to prove that he or she consented to the act of indecency."[72] This provision complemented the increased protection from sexual intercourse that was afforded in the same enactment to girls under the age of 14.[73]

In 1892, a provision for whipping the offender was added.[74] The offences of indecent assault on a male and assault with intent to commit buggery remained essentially unchanged until 1972, when the provision for whipping male offenders was repealed as part of the abolition of corporal punishment of male criminal offenders effective July 15, 1972.[75] (The sexual assault offences which replaced these offences have already been described).

Buggery and Bestiality

The *Criminal Code* provides that "every one who commits buggery or bestiality is guilty of an indictable offence and is liable to imprisonment for 14 years".[76] Neither "buggery" nor "bestiality" is defined in the *Criminal Code*, and resort must be had to their meanings at common law. "Buggery" is sexual intercourse by a male person *per anum* of another person, either male or female.[77] "Bestiality" is sexual intercourse in any manner with an animal.[78]

In 1969, important amendments which effectively de-criminalized consensual sexual behaviour between two consenting adults were introduced into Canadian criminal law.[79] Section 158 of the *Criminal Code* provides that the offences in section 155 (buggery) and section 157 (gross indecency) do not apply to any consensual act committed in private between a husband and his wife, or any two persons, each of whom is 21 or older. The section further provides, however, that this defence does not apply where more than two persons take part or are present or where the act occurs in a public place.[80] Moreover, a

person is deemed not to consent if the consent is obtained by force or fraud, or if that person is, and the other party knows or has good reason to believe that that person is feeble-minded or insane.[81]

The historical basis of the offences of buggery and bestiality at common law was the biblical injunction against participating in the "abominable" sexual practices reviled in the Old Testament.[82] The common law of England was vehement in its condemnation of both these crimes;[83] this vehemence was amply reflected in the laws of the provinces of British North America prior to Confederation. The Provinces of New Brunswick[84] and Canada[85] prescribed the death penalty for acts of buggery or bestiality, and the maximum penalty in Nova Scotia was set at life imprisonment, with a minimum term of imprisonment of at least seven years.[86]

The first post-Confederation enactment concerning these acts provided that "whosoever is convicted of the abominable crime of buggery committed either with mankind or with an animal, shall be liable to be imprisoned in the Penitentiary for life, or for any term not less than two years".[87] The minimum term of imprisonment for two years was dropped in 1886[88] and the offence remained substantially unchanged in the 1892 *Criminal Code*.[89] Two changes were effected in the 1955 *Criminal Code* revision:

1. The crime was stated simply to be "buggery or bestiality", the former term referring to sexual intercourse *per anum* between two human beings and the latter to sexual intercourse in any manner with an animal.

2. The punishment was reduced from a maximum of life imprisonment to a maximum of imprisonment for 14 years.[90]

The changes introduced in 1969 have already been described.

Incest

Section 150 of the *Criminal Code* provides that the offence of incest is committed when a person, knowing that another is by blood relationship his or her parent, child, brother, half-brother, sister, half-sister, grandparent, or grandchild, has sexual intercourse with that person.[91] Although both parties to the act of sexual intercourse are technically guilty of the offence, the law provides that, where a female person is convicted under this section and the court is satisfied that she participated in the act of sexual intercourse under restraint, duress or fear of the male person, the court is not required to impose any punishment upon her.[92] Section 147 of the *Criminal Code* states that no male person shall be deemed to commit incest while he is under the age of 14 years. The maximum punishment upon conviction for incest is imprisonment for 14 years.[93]

Although incest was never considered a crime at common law, it attracted the interest of legislators in England more than two and a half centuries before

the eventual passage in that country of the *Punishment of Incest Act*, 1908.[94] According to Hogan:[95]

> It is generally assumed that incest was first made a crime by Parliament in the Punishment of Incest Act of 1908. In fact a statute was passed in 1650 during the Interregnum for "suppressing the abominable and crying sins of Incest, Adultery and Fornication" and the Act made incest a felony punishable by death without benefit of clergy. Before that the punishment of incest lay with the ecclesiastical courts and no doubt it was the abolition of these courts under the Commonwealth which led to the Act of 1650. The Act lapsed on the Restoration and the punishment of incest was restored to the ecclesiastical courts.

In any event, the Canadian legislative experience concerning incest differs markedly from the English. Prior to Confederation, the Provinces of Prince Edward Island, New Brunswick and Nova Scotia enacted laws dealing specifically with incest. In 1854, the Province of New Brunswick enacted a statute making incest an offence carrying a maximum punishment of imprisonment for 14 years.[96] In 1861 and 1864, the Provinces of Prince Edward Island and Nova Scotia also enacted legislation making incest a criminal offence, carrying maximum punishments of imprisonment for 21 years[97] and two years[98] respectively. These statutes remained in force in these three provinces even after Confederation, since the authority to repeal pre-existing provincial criminal legislation was vested in 1867 in the federal Parliament.[99] No federal legislation was enacted to repeal them in the period between Confederation and the first appearance of incest as a federal criminal offence in 1890.[100]

In 1890, as part of the post-Confederation process of consolidating Canadian criminal laws, the federal Parliament enacted a statute making incest an offence.[101] The specified prohibited degrees of consanguinity were those of parent, child, brother, sister, grandparent and grandchild. The maximum punishment was set at 14 years' imprisonment, with male offenders also liable to be whipped. It was further provided that, "if the court or judge is of opinion that the female accused was a party to such intercourse only by reason of the restraint, fear or duress of the other party, the court or judge shall not be bound to impose any punishment on such person under this section."[102]

The identical section was re-introduced in the 1892 *Criminal Code*.[103] No important statutory changes occurred in the offence of incest until 1934, when half-siblings were added to the list of prohibited degrees of consanguinity.[104] In the 1955 revision of the *Criminal Code*, two significant amendments were introduced. The 1890 and subsequent statutory definitions of incest provided that persons within the prohibited degrees "*who cohabit or* have sexual intercourse with each other" shall be guilty of incest. The word "cohabit" was removed from the section, there being some differences of judicial opinion whether the word "cohabit" in this context meant the same as "have sexual intercourse with".[105]

An even more significant change concerned whether the accused could be convicted of incest on the uncorroborated testimony of one witness. Prior to

1955, the offence of incest could be so proven.[106] With the 1955 *Criminal Code* revision, however, incest was added to the list of offences requiring corroboration as a matter of law,[107] apparently due to a perceived danger of false or vexatious allegations being brought.[108] The statutory requirement for corroboration in cases of incest was removed in January, 1983.[109]

In 1972, the additional punishment of whipping male offenders (a punishment for which male incest offenders had been liable since 1890) was removed as part of the general abolition of corporal punishment of male criminal offenders.[110]

Consensual Sexual Touching

As noted, several offences listed in the preceding section (sexual assaults, indecent assaults, buggery and incest) may also be included here, depending upon the nature of the conduct involved in a complaint.

Sexual Intercourse with a Step-Daughter, Foster Daughter or Female Ward

Section 153(1)(a) of the *Criminal Code* provides that every male person who has illicit sexual intercourse with his step-daughter,[111] foster daughter or female ward is guilty of an indictable offence and is liable to imprisonment for two years.

This offence was first introduced into Canadian criminal law in 1890, although in a somewhat narrower form.[112] The 1890 provision stated that "every one who, being a guardian, seduces or has illicit connection with his ward . . . is guilty of a misdemeanor and liable to two years' imprisonment." This offence was later incorporated into the 1892 *Criminal Code*.[113]

In 1900, the term "guardian" was widened to include "any person who has in law or in fact the custody or control of the girl or child."[114] The scope of this offence was widened again in 1917, when the guardian/ward relationship was extended to include the relationships of step-parent/step-child and foster parent/foster child.[115] Until 1955, the section 153(1)(a) offence applied to sexual intercourse between persons of either sex who were legally related in the manner specified. In the 1955 *Criminal Code* revision, the section was amended so as to apply only to a male offender who had sexual intercourse with his step-daughter, foster daughter or female ward.[116] The statutory requirement for corroboration in prosecutions under section 153(1)(a) was removed in January, 1983.[117]

Sexual Intercourse by an Employer with a Female Employee under 21 Years of Age

Section 153(1)(b) provides that it is an indictable offence, punishable by a term of imprisonment of up to two years, for a male person to have illicit sex-

ual intercourse with a female under 21 and "of previously chaste character" with whom he stands in an employer-employee relationship.

The section 153(1)(b) offence was first introduced into Canadian criminal law in 1890, although in a much narrower form.[118] The 1890 provision stated that "every one who seduces or has illicit connection with any woman or girl of previously chaste character and under the age of 21 years who is in his employment in a factory, mill or workshop, or who, being in a common employment with him, in such factory, mill or workshop, under, or in any way subject to, his control or direction, is guilty of a misdemeanor and liable to two years' imprisonment." This offence was later incorporated into the 1892 *Criminal Code*,[119] with a provision being added that an accused could not be convicted of illicit sexual intercourse with a female employee if he subsequently married her.[120] In 1900, the section was amended to provide that the burden of proving the female employee's previous unchastity was on the accused.[121] This provision was repealed in January, 1983.

Section 153(1)(b) was extended in 1920 to include all forms of employment.[122] The amendments further provided that the accused might be acquitted if he was found not to be wholly or chiefly to blame for the act of sexual intercourse which took place,[123] and that evidence of previous sexual intercourse between the accused and the female employee could not be used to show that she was not of previously chaste character.[124] The latter evidentiary provision was repealed in January, 1983. The "lack of blameworthiness" defence was widened in 1959. The accused henceforth might be acquitted if the evidence did not show that he was "more to blame", rather than "wholly or chiefly to blame".[125] The requirement of corroboration was removed in January, 1983 by the repeal of the former section 139(1) of the *Criminal Code*.

Sexual Intercourse with a Female under the Age of 14 and Sexual Intercourse with a Female who is 14 or 15 Years of Age

Section 146(1) of the *Criminal Code* makes it an offence, punishable by a maximum sentence of life imprisonment, for a male person to have sexual intercourse with a female person who is not his wife and who is under the age of 14 years. The consent of the female to the sexual intercourse is not a defence to the charge,[126] nor is the fact that the accused believed she was 14 years of age or older.

Section 146(2) of the *Code* makes it an offence, punishable by a maximum sentence of five years' imprisonment, for a male person to have sexual intercourse with a female who is not his wife, is 14 or 15 years of age, and is of "previously chaste character," regardless of whether he believes that she is 16 years of age or older. In this event, however, the court may find the accused not guilty if the evidence does not show that the accused was more to blame than the female person for the behaviour which led to the charge.[127] Section 147 of

the *Criminal Code* states that no male person shall be deemed to commit an offence under section 146 while he is under the age of 14 years.

The statutory proscription of sexual intercourse with young females, regardless of their consent to the sexual intercourse,[128] has a long history in Canada. Prior to Confederation, a number of colonial statutes were passed which bolstered the legal protection of young girls from premature sexual intercourse that was provided under imperial statutes applicable to British North America. In 1758, the Nova Scotia Assembly enacted a statute making it a capital felony to have sexual intercourse with a girl under 12 years of age.[129] This protection later took the form of two distinct offences: sexual intercourse with a girl under the age of 10, punishable by life imprisonment,[130] and sexual intercourse with a girl of 10 or 11 years of age, punishable by a term of imprisonment not exceeding seven years.[131] The Province of Canada prescribed the death penalty for males having sexual intercourse with girls under the age of 10,[132] and made it a misdemeanor to have sexual intercourse with a girl aged 10 or 11, the punishment for such offence being left to the discretion of the court.[133] A comparable statutory scheme concerning girls under the age of 10 and of 10 or 11 years of age was also in force in New Brunswick prior to Confederation.[134]

Upon Confederation in 1867, the authority to enact laws in relation to criminal law and procedure was conferred on the federal Parliament[135] and the process of making criminal law and procedure uniform throughout Canada began shortly thereafter. In 1869, it was made a federal criminal offence, punishable by death, to have sexual intercourse with a girl under the age of 10.[136] Sexual intercourse with a girl aged 10 or 11 was made a distinct offence carrying a maximum punishment of seven years' imprisonment,[137] as was an attempt to have sexual intercourse with a girl under the age of 12, which carried a punishment of imprisonment for any term of less than two years, with or without hard labour or whipping.[138] The punishment for having sexual intercourse with a girl under the age of 10 was reduced in 1877 from death to a term of imprisonment for life or for any term not less than five years.[139]

In 1886, statutory protection was also afforded against any person who "seduces and has illicit connection with any girl of previously chaste character, or who attempts to have illicit connection with any girl of previously chaste character, being in either case of or above the age of 12 years and under the age of 16 years,"[140] with a maximum punishment of two years' imprisonment. This qualified form of protection concerning girls between 12 and 16 was reformulated in 1890. The seduction offence was made to apply to girls between 14 and 16,[141] whereas the "unlawful sexual intercourse" provisions, which previously had applied only to girls under the age of 12, were extended to provide protection against sexual intercourse for girls under the age of 14.[142]

The 1892 *Criminal Code*[143] retained the offence of seduction of a girl of previously chaste character between 14 and 16,[144] and further extended the

protection for girls under 14 by making the accused's belief concerning the girl's age irrelevant to the charge. Sections 269 and 270 of the 1892 *Criminal Code* provided:

> 269. Every one is guilty of an indictable offence and liable to imprisonment for life, and to be whipped, who carnally knows any girl under the age of 14 years, not being his wife, whether he believes her to be of or above that age or not.
>
> 270. Every one who attempts to have unlawful carnal knowledge of any girl under the age of 14 years is guilty of an indictable offence and liable to two years' imprisonment, and to be whipped.

In 1893, the offence of "seducing *and* having illicit connection with" girls of previously chaste character between the ages of 14 and 16 was widened to proscribe "seducing *or* having illicit connection with" such girls,[145] rendering proof of seduction unnecessary and hence providing additional protection to girls within this age group.[146]

Another reformulation of this offence occurred in 1920, when the "seduction" offence was made applicable to girls between the ages of 16 and 18, while the "unlawful sexual intercourse" provision (for which seduction need not be proved) concerning girls of previously chaste character between the ages of 14 and 16 was retained, with the maximum punishment increased from two to five years. With respect to this latter offence, the jury might acquit the accused if the evidence did not show that the accused was "wholly or chiefly to blame."[147] This provision was replaced in 1959 by the phrase "more to blame than the female person",[148] to improve statutory clarity.[149] In 1934, it was provided that sexual intercourse by the accused with the girl on a prior occasion shall be deemed not to be evidence that she was not of previously chaste character.[150] The requirement that the accused carry the burden of proving that the female person was not of previously chaste character was made applicable to the section 146(2) offence in the 1955 revision of the *Criminal Code*.[151] The January, 1983 repeal of former section 139 of the *Criminal Code* included the latter two provisions.

Prior to the 1955 *Criminal Code* revision, the offences of unlawful sexual intercourse with a girl under 14, or with a girl aged 14 or 15, required corroboration of the complainant's evidence before a conviction could be entered.[152] As part of the 1955 revision, the common law rule of practice that it was unsafe for the jury to find the accused guilty on the basis of the complainant's uncorroborated testimony, but that they were entitled to do so if satisfied beyond a reasonable doubt that her evidence was true, was codified and made applicable to the unlawful sexual intercourse offences.[153] This provision was repealed in 1976;[154] under the current law, the unsworn testimony of a child is subject to the requirement of corroboration.[155]

With respect to the punishment for which the accused is liable upon being convicted of this offence, although whipping was traditionally available as a punishment for the offence of unlawful sexual intercourse with a female under

the age of 14, corporal punishment for this and all other offences was abolished in Canada effective July 15, 1972.[156]

Sexual Intercourse with a Feeble-Minded Female

The offence of having sexual intercourse with a feeble-minded female was repealed in January, 1983. The former section 148 of the Criminal Code made it an indictable offence, punishable by imprisonment for up to five years, for any male person who, under circumstances that did not amount to rape, had sexual intercourse with a female person who was not his wife and who was, or whom he knew or had good reason to believe was, feeble-minded, insane or was an idiot or imbecile. In this context, "feeble-minded person" meant a person "in whom there exists and has existed from birth or from an early age, mental defectiveness not amounting to imbecility, but so pronounced that he requires care, supervision and control for his protection or for the protection of others."[157]

Although there have been very few reported decisions concerning this offence, its basis appeared to be the combination of the female person's defective mental capacity and the male person's appreciation of and unscrupulous disregard of this fact, culminating in sexual intercourse.[158] The offence envisaged a situation in which a female person, although of defective mental capacity, was capable of giving and did give her consent to sexual intercourse. In order to discourage exploitive sexual behaviour of this kind, the male was made culpable, notwithstanding that the woman so afflicted apparently consented to the sexual intercourse. A female who was under one of the incapacities outlined in section 148 could, however, give a valid consent to what would otherwise have been an indecent assault: it was sexual intercourse in these circumstances that section 148 was directed at. Where the female person's mental defectiveness was such as to render her incapable of giving a valid consent to sexual intercourse, the offence of rape was the more appropriate charge.[159]

The offence of having sexual intercourse with a feeble-minded female first appeared in Canadian criminal law in 1886[160] and was modelled on English legislation enacted in the previous year.[161] A punishment of up to two years' imprisonment was prescribed for every one who "unlawfully and carnally knows or attempts to have unlawful carnal knowledge of any female idiot or imbecile woman or girl, under circumstances which do not amount to rape, but which prove that the offender knew at the time of the offence that the woman or girl was an idiot or imbecile."[162] The section was amended in 1887 to include sexual intercourse with females who were insane[163] and, in the 1892 *Criminal Code*, the offence was also made applicable to women who were deaf and dumb with the penalty being raised to four years' imprisonment.[164]

In 1900, additional legislative protection was afforded against this form of exploitation. The requirement that the accused know of the female person's incapacity was modified, so that henceforth the prosecution needed only to

prove that the accused had good reason to believe that the female was mentally infirm.[165] The category of females who were "feeble-minded" was added to this section in 1927, thus enlarging its scope.[166]

The 1955 *Criminal Code* revision effected three changes to this offence:[167]

1. The proscription against sexual intercourse with females who were deaf and dumb was removed.[168]
2. The offence was made inapplicable to acts of sexual intercourse between an accused and his wife.
3. The maximum punishment was raised from four to five years' imprisonment.

Section 139(1) of the *Criminal Code*, which formerly provided that no accused could be convicted of the section 148 offence upon the evidence of only one witness unless the evidence of that witness was corroborated in a material particular by evidence that implicated the accused, was repealed in January, 1983.

Seduction of a Female Who is 16 or 17 Years of Age

Section 151 of the *Criminal Code* makes it an indictable offence, punishable by imprisonment for up to two years, for any male person of 18 years of age or more to seduce a female person of previously chaste character who is 16 years or more but fewer than 18 years of age. "Seduction" in this context connotes something more than inducing a woman to have sexual intercourse;[169] it involves as a further element "the surrender by a woman of her chastity to a man as the result of his persuasion, solicitation, promises, bribes or other means without the employment of force."[170] The "surrender of a woman's chastity" contemplated by this section is nonetheless a consensual one. Where the complainant does not consent, a charge of sexual assault is more appropriate.[171]

The seduction offence in section 151 of the *Criminal Code* had its origin in an 1886 enactment which proscribed the seduction of girls of previously chaste character between the ages of 12 and 16.[172] The age group to which this offence applied was increased in 1890 to girls 14 and 15,[173] and in 1920 to girls 16 and 17,[174] in order to provide a sanction against the seduction of young women whose ages put them just outside the protection afforded by the "unlawful sexual intercourse" offences, which since 1920 have applied to girls under 16.

In 1920, the section was amended to provide that proof of previous sexual intercourse between the parties was not to be considered evidence that the girl was not of previously chaste character, and that the jury might acquit, if in their view, the accused was not wholly or chiefly to blame.[175] This latter provision was removed in the 1955 *Criminal Code* revision,[176] as it was considered that a man who seduces a young woman of this age was necessarily culpable.[177]

The need for corroboration and the burden on the accused to prove the complainant was not of previously chaste character, which were requirements in the former sections 139(1) and (2) of the *Criminal Code*, were repealed in January, 1983.

Seduction under Promise of Marriage

Section 152 of the *Criminal Code* makes it an indictable offence, punishable by imprisonment for up to two years, for any male person 21 or older who, under promise of marriage, seduces an unmarried female person of previously chaste character who is less than 21 years of age.

The offence of seduction under promise of marriage was first introduced into Canadian criminal law in 1886[178] and was modelled on American state legislation,[179] there being no English precedent for this offence.[180] It originally applied only to girls under the age of 18, but was amended in 1887 by raising this age to 21.[181] The 1892 *Criminal Code* included a provision that the subsequent marriage of the parties was a complete defence to the charge.[182] This provision was deleted when the former section 139(2) of the *Criminal Code* was repealed in January, 1983. The need for corroboration and the burden on the accused to prove the complainant was not of previously chaste character, which were requirements in the former sections 139(1) and (2) of the *Criminal Code*, were also repealed in January, 1983.

Parent or Guardian Procuring Defilement

Section 166 of the *Criminal Code* makes it an offence for a parent or guardian of a female person to procure her to have illicit sexual intercourse with another person or knowingly to receive the avails of her seduction, defilement or prostitution. This offence is punishable by imprisonment for 14 years, if the female person is under 14, or by imprisonment for five years, if she is age 14 or older.

The offence of procuring, by false pretences, a female under 21 to have illicit sexual intercourse first appeared in Canadian criminal law in 1869;[183] it was on this offence that the more specific prohibition directed at parents and guardians was based. In 1890, the offence relating to a parent or guardian of a female person who procures her defilement was enacted, with the penalty being made contingent on whether the female in question was under 14 or 14 or older.[184] In 1892, it was provided that no person accused of this offence shall be convicted on the evidence of one witness unless that witness was corroborated in a material particular by evidence implicating the accused.[185] This statutory corroboration requirement was repealed in January, 1983.

Other Sexual Behaviour

Gross Indecency

Section 157 of the *Criminal Code* provides that "every one who commits an act of gross indecency with another person is guilty of an indictable offence and is liable to imprisonment for five years". The phrase "act of gross indecency" has never been defined by statute. Although it was originally limited to homosexual male behaviour, it now refers to an ill-defined range of homosexual and heterosexual behaviours variously involving adults, adolescents or children, depending on the circumstances.

The offence of gross indecency first appeared in Canadian law in 1890,[186] and was modelled on an English statute enacted five years earlier.[187] It was apparently intended to proscribe homosexual male behaviours such as fellatio and mutual masturbation, which were not crimes at common law.[188] The offence could only be committed by a male with another male; it was irrelevant whether the act occurred in public or in private. A comparable provision was included in the 1892 *Criminal Code*.[189]

An examination of the parliamentary debates upon the introduction of the "gross indecency" offence in 1890 and upon its reintroduction into the 1892 *Criminal Code* suggests that the legislators who supported the provision had little idea what range of behaviours would be proscribed by it,[190] apart from its applicability to homosexual male behaviour generally. In any event, the offender was liable to five years' imprisonment or to be whipped. Under the original English statute, the punishment was limited to imprisonment for any term not exceeding two years.

The offence remained unchanged from 1892 until the 1955 *Criminal Code* revision, when it was widened to apply to acts committed by or between persons of either sex. At the same time, the provision for whipping as an additional punishment was dropped.[191] The 1969 amendments to the *Code*, which effectively de-criminalized private sexual behaviour between two consenting adults, have already been described under "Buggery and Bestiality." Corroboration is not required in prosecutions for gross indecency.[192]

Indecent Act

Section 169 of the *Criminal Code* provides that it is a criminal offence wilfully to do an indecent act in a public place in the presence of one or more persons, or in any place with intent to insult or offend any person. A public place is expressed as including any place to which the public has access as of right or by invitation, express or implied.[193] The *Criminal Code* does not define the term "indecent act" and, while this offence typically refers to acts of male exposure, it subsumes also a variety of inappropriate behaviours from profaning a religious ceremony to masturbating in a window or "streaking" in public.

Where the act is done in a public place, the mere wilful doing of the act is an offence, regardless of whether the person intends to insult or offend any individual present. Where, however, the act is done in a place other than a public place, the person's intent to insult or offend another person is an element of the offence.[194] The offence of indecent act is punishable on summary conviction, the offender being liable to a fine of not more than $500 or to imprisonment for six months, or to both.[195]

Although the offence of outraging public decency (of which the public exposure by a male of his genitals was the most common instance) had been a common law misdemeanour in England since the seventeenth century,[196] in 1822, the English Parliament enacted a statute on "vagrancy" which specifically proscribed acts of indecent exposure.[197] It was from this statute that the first Canadian legislation on this topic derived.

In 1869, the Canadian Parliament enacted a comparable statutory scheme dealing with the apparently widespread problem of "vagrancy". A vagrant was defined in remarkably broad terms as including all idle persons not having visible means of support, all common prostitutes and keepers or patrons of bawdy-houses or houses of ill-fame who could not give a satisfactory account of themselves, all persons who lived primarily by gaming or crime or on the avails of prostitution, and "all persons openly exposing or exhibiting in any street, road, public place or highway any indecent exhibition, *or openly or indecently exposing their persons*".[198] A person found to be a vagrant was liable to imprisonment for a term not exceeding two months, with or without hard labour, or to a fine not exceeding $50, or to both. In 1874, the maximum term of imprisonment for this offence was increased to imprisonment for six months,[199] and in 1881 it was made clear that this term of imprisonment could be imposed with or without hard labour.[200] In 1886, the vagrancy provisions were incorporated into the omnibus statute entitled *An Act respecting Offences against Public Morals and Public Convenience*,[201] but were not changed in substance.

A legal re-classification of exhibitionistic behaviour occurred in 1890.[202] The offender's act of indecent exposure in a public place, rather than his status as a vagrant, constituted the offence.[203] More changes were introduced two years later. In the 1892 *Criminal Code*, the phrase "wilfully commits any indecent exposure of the person" was replaced with the more general provision, "wilfully . . . does any indecent act", and another section was added which proscribed indecent acts calculated to insult or offend any person present, regardless of where the act took place.[204] The offence as defined in the 1892 *Criminal Code* remained unchanged until the 1955 *Criminal Code* revision, when the concept of "public place" was clarified[205] and the allowable fine for this offence was increased from $50 to $500, as part of the standardization of penalties for summary conviction offences.[206]

Contributing to Juvenile Delinquency

When the *Juvenile Delinquents Act*[207] was repealed and replaced in April, 1984 by the *Young Offenders Act*,[208] the offences of "juvenile delinquency" and "contributing to juvenile delinquency" ceased to exist in Canadian law.

Section 33(1) of the *Juvenile Delinquents Act* provided:

> 33 (1) Any person, whether the parent or guardian of the child or not, who, knowingly or wilfully,
>
> (a) aids, causes, abets or connives at the commission by a child of a delinquency, or
>
> (b) does any act producing, promoting, or contributing to a child's being or becoming a juvenile delinquent or likely to make any child a juvenile delinquent,
>
> is liable on summary conviction before a juvenile court or a magistrate to a fine not exceeding five hundred dollars or to imprisonment for a period not exceeding two years, or to both.
>
> (4) It shall not be a valid defence to a prosecution under this section either that the child is of too tender years to understand or appreciate the nature or effect of the conduct of the accused, or that notwithstanding the conduct of the accused the child did not in fact become a juvenile delinquent.

Section 2(1) of the *Juvenile Delinquents Act* stated that a "child" meant "any boy or girl apparently under the age of 16 years, or such other age as may be directed in any province pursuant to subsection (2)". Subsection (2) specified under age 18. Accordingly, the age below which a person was a "child" for the purposes of the application of the Act varied among the provinces: in Manitoba and Quebec, a "child" meant a person under 18; in British Columbia and Newfoundland, a "child" meant a person under 17; and everywhere else in Canada, a "child" meant a person under 16.

A child was considered a "juvenile delinquent" if he or she "violates any provision of the *Criminal Code* or of any federal or provincial statute, or of any by-law or ordinance of any municipality, or *who is guilty of sexual immorality or any similar form of vice*, or who is liable by reason of any other act to be committed to an industrial school or juvenile reformatory under any federal or provincial statute".[209] Accordingly, a person "contributes to juvenile delinquency" by behaving in a manner that does or is likely to cause a child to become a juvenile delinquent, for example, by causing the child to engage in or be exposed to "sexual immorality or any similar form of vice." The term "sexual immorality or any similar form of vice" was sufficiently vague to cover any number of sexual behaviours and to allow for disagreements of judicial opinion.

The offence of contributing to juvenile delinquency had been part of the *Juvenile Delinquents Act* since the Act was first passed in 1908.[210] It originally carried a maximum penalty of a fine not exceeding $500 or imprisonment not exceeding one year, or both.[211] This was increased in 1924 to a fine not exceeding $500, or imprisonment not exceeding two years, or both.[212] In 1936, a provision was added which prevented the accused from pleading either that the child was too young to understand the nature of the accused's conduct, or that

notwithstanding such conduct, the child did not in fact become a juvenile delinquent.[213] It served to emphasize that the offence of "contributing" was directed more at the accused's inappropriate conduct than at the arguable consequences of that conduct for the child.

Judicial decisions which stated that an accused could not contribute to the delinquency of a child who was already a delinquent appear to have conflicted with the obvious policy of section 33(4).[214] The offence of contributing to juvenile delinquency remained substantially unchanged between 1936 and the repeal of this legislation in April, 1984.

The philosophy underlying the *Juvenile Delinquents Act* was expressed in the following terms:[215]

> The modern Juvenile Court represents a socio-legal mechanism empowered to deal with juveniles in such a way as to divorce the treatment of children from the processes of law that have been created to deal with adult offenders. There is a statutory requirement that the Court have regard to the child's welfare. The juvenile is not convicted of a criminal offence and sentenced to punishment; instead he is adjudicated a delinquent and treatment is administered. In theory, the juvenile justice system is totally committed to rehabilitation and to "the best interests of the child."

This philosophy was increasingly challenged in recent years, and the debate over Canadian juvenile justice policy in the last decade culminated in the federal *Young Offenders Act*,[216] which repealed the *Juvenile Delinquents Act*. The *Young Offenders Act* sets out the following general principles:[217]

> 3 (1) It is hereby recognized and declared that
>
> (a) while young persons should not in all instances be held accountable in the same manner or suffer the same consequences for their behaviour as adults, young persons who commit offences should nonetheless bear responsibility for their contraventions and society must be afforded the necessary protection from illegal behaviour;
>
> (b) young persons who commit offences require supervision, discipline and control, but because of their state of dependency and level of development and maturity, they also have special needs and require guidance and assistance;
>
> (c) where it is not inconsistent with the protection of society, measures other than judicial proceedings under this Act should be considered for dealing with young persons who have committed offences;
>
> (d) young persons have rights and freedoms in their own right, including those stated in the Canadian Bill of Rights, and in particular a right to be heard in the course of, and to participate in, the processes that lead to decisions that affect them, and young persons should have special guarantees of their rights and freedoms;
>
> (e) in the application of this Act, the rights and freedoms of young persons include the right to the least possible interference with freedom, having regard to the protection of society, the needs of young persons and the interests of their families;

(f) young persons have the right, in every instance where they have rights or freedoms that may be affected by this Act, to be informed as to what those rights and freedoms are; and

(g) parents have responsibility for the care and supervision of their children, and, for that reason, young persons should be removed from parental supervision either partly or entirely only when all measures that provide for continuing parental supervision are inappropriate.

(2) This Act shall be liberally construed to the end that young persons will be dealt with in accordance with the principles set out in subsection (1).

Under the new scheme introduced in April, 1984, the age of criminal responsibility was raised from seven to 12 (young persons under 12 may, where appropriate, be dealt with pursuant to provincial law); the upper age limit of persons to whom the Act applies was made uniform at age 18 (those under 18 are dealt with under the *Young Offenders Act*, those 18 or older are dealt with under the adult criminal justice system); and the Act only applies to young persons who commit specific offences under federal law.

Use of Premises

Corrupting Children

Section 168 of the *Criminal Code* makes it an offence to participate, in the home of a child, in adultery or sexual immorality and thereby endanger the morals of the child or render the home of a child an unfit place for the child to be in. "Child" in this context means a person who is or who appears to be under the age of 18.[218] This offence is punishable by imprisonment for two years.

The *Criminal Code* imposes two procedural limitations on the charging of this offence. The first also applies to sections 151, 152, 153(1)(b), 166 and 167 of the *Code*, that is, that no proceedings for an offence under the section shall be commenced more than one year after the time when the offence was committed.[219] The second is that unless proceedings under this section are instituted by or at the instance of a recognized society for the protection of children or by an officer of a juvenile court, the consent of the Attorney General is necessary in order to charge a person with the offence.

What is now section 168 of the *Criminal Code* was first introduced into Canadian criminal law in 1918.[220] It provided that "any person who, in the home of a child, by indulgence in sexual immorality, in habitual drunkenness or in any other form of vice, causes such child to be in danger of being or becoming immoral, dissolute or criminal, or the morals of such child to be injuriously affected, or renders the home of such child an unfit place for such child to be in", was liable on summary conviction to a fine not exceeding $500, or to imprisonment for a term not exceeding one year, or to both. A "child"

was defined as a boy or girl apparently or actually under the age of 16 years; that the child was too young to understand or appreciate the nature of the "immoral" acts to which he or she was exposed was stated to be irrelevant to the charge.

In 1933, the offence was amended to read "every one who, in the home of a child, participates in adultery . . . ",[221] in consequence of a court decision which held that the mere fact of being adulterous in the home of a child was not sufficient to warrant a conviction under this section.[222] The amendment further provided that proof of adultery, sexual immorality or habitual drunkenness in the home of a child raised an irrebuttable legal presumption that the child's morals were thereby endangered. This statutory presumption was qualified two years later by inclusion of a provision that a common law relationship did not of itself endanger the morals of a child who was a product of that relationship.[223]

A number of changes to this offence were effected by the 1955 *Criminal Code* revision:

1. The irrebuttable legal presumption that a child's morals were endangered upon proof of the described conditions, was dropped.
2. The definition of "child" was amended to read, "a person who is or appears to be under the age of 18 years", in order to make it conform to the upper age-limit under the *Juvenile Delinquents Act*.
3. The offence was made indictable and the penalty increased to a term of imprisonment not exceeding two years.[224]

This offence has remained in its present form since 1955.

Owner, Occupier or Manager of Premises Permitting Defilement of a Female Person under 18 Years of Age

Section 167 of the *Criminal Code* makes it an offence knowingly to permit a female person under the age of 18 to use premises, of which one is the owner, occupier or manager, for the purpose of having illicit sexual intercourse with a particular male person or with male persons generally. A person convicted of this offence is liable to imprisonment for five years.

This offence first appeared in Canadian criminal law in 1886 and was modelled on English legislation enacted in the previous year.[225] The 1886 provision stated that "any person who, being the owner or occupier of any premises, or having, or acting, or assisting in the management or control thereof, induces, or knowingly suffers, any girl . . . to resort to or be in or upon such premises for the purpose of being unlawfully and carnally known by any man, whether such carnal knowledge is intended to be with any particular man or generally," was liable to imprisonment for 10 years if the girl was under 12, or to imprisonment for two years if the girl was 12 or older, but not yet 16.[226] It was further prc-

vided that, where the accused had reasonable cause to believe that the girl was 16 or older, such belief was a valid defence to the charge.[227]

A series of amendments in the ensuing 15 years increased the statutory protection from the forms of exploitation contemplated by this offence. In 1890, the punishment of 10 years' imprisonment was made applicable to offences involving girls under 14, whereas this penalty had previously applied only where girls under 12 were involved.[228] The 1892 *Criminal Code* adopted this provision, and repealed the statutory defence which previously had operated to exonerate an accused who reasonably believed the girl to be 16 or older.[229] In 1900, the upper age limit of girls protected by this section was raised from 16 to 18, with the penalties again depending on whether the girl was under 14, or between 14 and 18.[230]

The only significant changes in this offence since the turn of the century were effected in the 1955 revision of the *Criminal Code*. The maximum sentence for this offence was set at five years' imprisonment, eliminating the former penal distinction based on whether the girl in question was under 14, or 14 or older but not yet 18;[231] and the statutory requirement for corroboration of a sole witness's testimony, which had applied to this offence since 1892,[232] was removed.[233] The rationale was that, since this offence was a cognate form of the bawdy-house offences and since the latter did not require corroboration, corroboration in this context was similarly unnecessary.[234]

Vagrancy

Section 175(1)(e) of the *Criminal Code* provides that "every one commits vagrancy who, having been at any time convicted of an offence under a provision mentioned in paragraph 689(1)(a) or (b), is found loitering or wandering in or near a school ground, playground, public park or bathing area". A person convicted of this offence is punishable on summary conviction.[235]

This form of the vagrancy offence was introduced into Canadian criminal law in 1951[236] and was intended to provide a sanction against convicted sexual offenders found loitering in places frequented by children. Offenders previously convicted of (among other offences) rape, attempted rape, sexual intercourse with a female under 14, sexual intercourse with a female 14 or 15, indecent assault on a female or a male or gross indecency were subject to the prohibition.

Due, however, to a drafting error in the most recent re-enactment of this offence, the section 175(1)(e) provision cannot be charged, since the reference to "paragraph 689(1)(a) or (b)" fails to refer to any of the above offences. The necessary legislative amendments were not introduced in January, 1983.

Consent

The preceding classification of offences demonstrates the difficulty of arriving at any comprehensive statement of the role of consent in the major

sexual offences. Some of the current offences involving sexual touchings may be either non-consensual or consensual, depending upon the conduct complained of. Of these offences, those which mention consent do so in relation to age and the same is true of the offences involving consensual sexual touching.

The offences involving other sexual behaviour, which are not act-specific and which potentially include a wide range of sexual behaviour do not mention consent, but the exception to one of these offences does, in relation to age, and the exception also applies to an offence which involves a sexual touching and which may be either non-consensual or consensual.

The offences involving the use of premises do not mention consent, though age is an element in two of the offences.

The form of the offences and the exception provisions reflect different approaches over time as well as the need to accommodate the existing scheme of offences and defences. A brief case study of the former indecent assault

Table 12.2

Offences Involving Sexual Intercourse Where the Age of the Female is Not an Element

Criminal Code Offence	Effect of January, 1983 Amendments		
	Maximum Sentence	Offence Repealed	Offence Modified
Rape (formerly sections 143-145)	(formerly) life imprisonment	X	
Incest (section 150)	14 years' imprisonment		Corroboration no longer required.
Sexual Intercourse with Step-Daughter, Foster Daughter, or Female Ward (section 153(1)(a))	2 years' imprisonment		Corroboration no longer required.
Sexual Intercourse with Feeble-Minded Female (formerly section 148)	(formerly) 5 years' imprisonment	X	
Parent or Guardian Procuring Defilement (section 166)	14 years' if female is under 14		Corroboration no longer required.
	5 years' if female is 14 or older		

Table 12.3
Offences Involving Sexual Intercourse
Where the Age of the Female is an Element

Criminal Code Offence	Effect of January, 1983 Amendments		
	Maximum Sentence	Offence Unchanged	Offence Modified
Sexual Intercourse by Employer with Female Employee under 21 (section 153(1)(b))	2 years' imprisonment		Corroboration no longer required. Burden of proof and evidentiary presumption repealed. Defence of subsequent marriage repealed.
Sexual Intercourse with Female under 14 (section 146(1))	life imprisonment	X	
Sexual Intercourse with Female 14 or 15 (section 146(2)	5 years' imprisonment		Burden of proof provision and evidentiary presumption repealed.
Seduction of Female 16 or 17 (section 151)	2 years' imprisonment		Corroboration no longer required. Burden of proof provision and evidentiary presumption repealed.
Seduction of Female under 21 under Promise of Marriage (section 152)	2 years' imprisonment		Corroboration no longer required. Burden of proof provision repealed. Defence of subsequent marriage repealed.
Owner or Manager of Premises Permitting Defilement of Female under 18 (section 167)	5 years' imprisonment	X	

offences and the current sexual assault offences illustrates the importance of re-examining the question of consent, especially in relation to age, in the development of new sexual offences, as well as the problems which can result from including consensual as well as non-consensual conduct in the same offence.[237]

Section 140 of the *Criminal Code* provides that:

> Where an accused is charged with an offence under section 146 (sexual intercourse with a female under 14 or 14 but under 16) in respect of a person under the age of fourteen years, the fact that the person consented to the commission of the offence is not a defence to the charge.

Section 140 implicitly recognizes that a young girl who understands the nature of the sexual act may give an otherwise valid consent to it:[238] statute makes the consent irrelevant. While statute had long prohibited sexual intercourse with children through "carnal knowledge" provisions, it was not until an English statute of 1880[239] that the consent of a child under 13 years-old was declared not to be a defence to a charge of indecent assault. For most of the nineteenth century prior to the enactment of this statute, indecent assault was charged as common assault. Judges contrasted charges of common assault with those involving carnal knowledge, where statutory intervention had been necessary to make the girl's consent irrelevant, and considered that, in the absence of a statutory provision, consent to an assault could be given where the child understood the nature of the act.[240] G.W. Burbidge, writing on the Canadian criminal law as it stood on September 1, 1889, commented that:

> "This unsatisfactory state of the law as to the consent of young persons has been remedied in England both as to boys and girls by the Act 43 & 44 Vict. c. 45 [1880], by which it is enacted that it shall be no defence to a charge or indictment for an indecent assault on a young person under the age of thirteen to prove that he or she consented to the act of indecency. A similar statute could, with advantage, be passed in Canada."[241]

A similar provision was enacted in Canada in 1890,[242] with the age of 14 substituted for 13.[243] The advantage of the new legislation lay in the fact that convictions could be obtained because the cases which allowed consent by young children to constitute defences to indecent assault charges no longer applied.[244] However, the inclusion of consensual touching of children in assault offences prefigured later problems in connection with consent to physical harm.

The limitations on the kind of physical harm to which a valid consent can be given by anyone were articulated in the 1934 English case of *R. v. Donovan*,[245] and are now contained in section 245.1(2) of the *Criminal Code*, which defines "bodily harm" as "any hurt or injury to the complainant that interferes with his or her health or comfort and that is more than merely transient or trifling in nature." It was pointed out earlier in the chapter in the discussion of the new sexual assault offences that the exception provision in sec-

tion 246.1(2) of the *Criminal Code*, where the accused is less than three years older than a consenting complainant who is less than 14, may allow a child under 14 to give a valid consent to being injured by a person less than three years older. The exception provision was simply an attempt to provide a defence for the sexual assault provisions that Bill C-53 (which was not enacted) had provided for the proposed offence of sexual misconduct with a person under age 14. However, while the defence in Bill C-53 would have prevented a conviction for sexual misconduct, it would not have prevented a conviction for sexual assault causing injury under the Bill's sexual assault provisions, which did not mention consent. The wording of the exception provision in section 246.1(2) implies that consent by a complainant who is less than 14 constitutes a defence to even the most serious sexual assault offences. If the facts disclose consensual sexual intercourse with a child under 14, a prosecutor could still charge under s. 146(1), which was to have been repealed by Bill C-53. There is an ironic parallel here with the situation in Canada prior to the 1890 legislation.[246]

Once the fixed age of 14 is removed for the purposes of the exception provision, the consent that is required is governed by the common law and section 244(3) of the *Criminal Code*. This section seems more useful in connection with adults. The factors mentioned in the section (the application of force, threats or fear of the application of force, fraud and the exercise of authority) would vitiate the consent given by children even at common law,[247] and these factors will not necessarily be present in the case of young children. To this extent, the nature of the special protection needed by children was overlooked.

What is regrettable is that the existing protection for children has been eroded, since the common law position was (and presumably still is) that the consent of a young child can constitute a defence to an assault.[248] In this regard, the assumption may have been made that for the purposes of the exception provision, a valid consent could not be given by a child of, say, less than 12 years-old. The legal history of child victims of indecent assaults shows that the effective protection of children requires greater certainty.[249] As with the former indecent assault legislation, a minimum age for giving valid consent must be specified. At the same time, the Committee's findings regarding the sexual exploitation of children by youths not much older than themselves[250] indicate the risks involved in retaining the exception in any form.

Major Legal Trends

As the preceding synopsis indicates, the Canadian criminal law of sexual offences (especially as it relates to children and young persons) has been shaped more by perceived necessity than by logical rigour. Accurate historical generalizations are difficult to make; there is always the danger of attributing to a succession of past legislators a legal strategy which they themselves may never have contemplated. Even so, based on our knowledge of Canadian legis-

lative history in this regard, a number of broad conclusions are justified. These conclusions help to point out the strengths and the weaknesses of the law of sexual offences up to January, 1983 and provide a basis for evaluating changes in the law.

1. *Sexual Intercourse with Girls.* The act of sexual intercourse, especially when engaged in with girls under a certain age, has traditionally been viewed as conduct warranting separate legal treatment. The several "sexual intercourse" offences cited in the review bear out this observation.

2. *Ages of Girls Protected.* The ages of girls sought to be protected by the sexual intercourse offences have been increased over the years. Where the girl is under 14, the law emphasizes in several ways the severity with which it views this conduct: by making the girl's consent to the sexual intercourse no defence to the charge; by making the accused's belief that the girl was over 14 no defence to the charge; and by making the penalty for the offence introduced in January, 1983 equivalent to that of the former offence of rape, namely, life imprisonment.

   Similarly, less absolute protection from sexual intercourse in various circumstances (sexual offences with females 14 and 15 and the seduction offences) was eventually provided for young females up to the age of 21.

3. *Other Forms of Sexual Conduct with Young Persons.* Concerning other forms of sexual conduct (the former indecent assault offences), in the case of males and females under age 14, the law also provided absolute protection. Here again, the fact that the young person consented to the sexual act was not a defence to the charge. Further, the law regulates certain heterosexual and homosexual conduct (buggery, gross indecency) where the two partners are not married to each other and where one of the parties is under age 21, regardless of the person's consent to the sexual act.

4. *Private, Consensual Sex Between Two Adults.* Consensual sexual conduct in private between two persons, whether it be homosexual or heterosexual, has since 1969 been considered not the business of the criminal law, provided that the participants are either married to each other or are 21 or older.

5. *The Publication of Complainants' Identities.* Historically, the publication of the identities of sexual victims has not been viewed as a pressing concern by Canadian legislators. Some legal protection against identification was provided in 1976, but even this protection was arbitrarily limited to female victims of only four specific offences, leaving the victims of other sorts of offences with only the informal protective mechanisms of the courts, the media and the legal reporting services.

6. *The Testimony of Sexual Complainants and Children.* Although the truthfulness of sexual victims has come to be viewed with less scepticism by the law than formerly (an example being the gradual displacement of the requirement of "corroboration" of a sexual victim's testimony), the law continues to view the evidence of children generally (and hence of child sexual victims) with suspicion, and thus may make it more difficult to convict sexual assailants of children than to convict sexual assailants of adults.

7. *Abuses of Family or Social Trust.* Apart from a few references, the *Criminal Code* sexual offences have failed to recognize explicitly legal and social relationships which, when abused, may place the child or young person in continuing jeopardy, for example, the "common law" husband of a woman who has children from a previous marriage.

8. *Sentencing.* Due to the lack of *Criminal Code* sexual offences explicitly recognizing the many varieties of child sexual abuse, there is no coherent sentencing policy in the *Criminal Code* where child sexual abuse is found to occur. For example, consensual homosexual conduct (on a secluded public beach) between two 25 year-old males, and male homosexual conduct between a 35 year-old and a 14 year-old, are both instances of the offence of "gross indecency", notwithstanding the obvious qualitative differences between the two behaviours. Moreover, the 25 year-olds in the former instance and the 35 year-old in the latter instance are liable to the same maximum punishment, again, notwithstanding the widely different levels of blameworthiness in the respective circumstances.

9. *The Lack of a Child-Oriented Legal Framework.* Apart from the offences proscribing sexual intercourse with girls or young women in various contexts, Canadian criminal law has tended to use the legal framework applicable to sexual offences against adults in dealing with sexual offences against children. This approach is objectionable on two major grounds. First, it fails to appreciate that adult sexual abuse is, along a number of dimensions, different in kind from child sexual abuse, and consequently, that child sexual victims need a legal framework tailored to their special needs and vulnerabilities. Second, it further fails to appreciate that "child sexual abuse" is itself a multi-faceted phenomenon, and that it is both confusing and counter-productive to lump very different sorts of inappropriate sexual behaviours with children together into a few vague legal categories such as "gross indecency", "sexual assault" or "sexual exploitation".

In light of these considerations, it is evident that the Canadian criminal law of sexual offences up to January, 1983 evinced some deficiencies which detracted from the protection the law affords children and youths.

Limitations of 1983 Amendments (Bill C-127)

On January 4, 1983, a new set of sexual offences and related provisions came into force in Canada and partially replaced the former legal framework. This development provides a case study concerning the extent to which the new sexual offences take into account the special problems in affording protection to children and youths.

The broad approach of the 1983 changes was the classification of non-consensual sexual acts as species of assaults and violence rather than as unacceptable forms of sexual gratification. Accordingly, the former offences of rape (which required proof of sexual intercourse), sexual intercourse with a feeble-minded female (which also required such proof), and indecent assault on a male or a female, were repealed. These offences were replaced by a three-tiered scheme of "sexual assault" offences, reviewed earlier in this chapter, which are

graded according to the nature of the additional circumstances which accompany the act. The term "sexual assault" was not defined, although it will likely be taken to mean either an assault[251] directed at a person's sexual organs, or an assault which, from the circumstances, is clearly sexually motivated.

In addition to re-classifying criminal sexual behaviour, the 1983 amendments introduced other important changes. The conditions under which the complainant's submission to or acquiescence in the sexual act will not be regarded as a valid legal consent to the act were broadened, although in somewhat vague terms.[252] The requirement of "corroboration" of a sexual assault victim's testimony is no longer required; this amendment may result in a greater number of prosecutions and convictions of sexual offenders. Where non-consensual sexual intercourse occurs between a husband and his wife, this is a form of sexual assault and can be prosecuted as such. Under the former law, a husband could not be convicted of raping his wife.[253] Moreover, the Crown can now compel the spouse of an accused sexual offender to testify in court for virtually all sexual crimes.

The new law also provides additional protection against identification of sexual victims in the media and restricts enquiries into a complainant's prior sexual conduct with persons other than the accused.

Notwithstanding these reforms, many of which will be helpful in the prosecution of sexual assaults against adults, in the Committee's judgment several of the changes introduced in 1983 are seriously deficient in relation to affording sufficient protection for children and youths who are victims of sexual offences. These deficiencies were born of the age-old practice of using a legal framework designed for adult sexual victims in purporting to deal with child sexual victims. Such a framework fails to deal adequately either with the peculiar vulnerabilities of children or with the very different reality of child as opposed to adult sexual abuse. Several examples suffice to demonstrate these deficiencies in relation to the child sexual victim.

1. **Under the former law, the consent of a person under 14 to be touched sexually was not a defence for the accused. Under the changes introduced in 1983, however, the consent of a person under 14 to be touched sexually is a defence, provided that the older party is less than three years older than the complainant. Implicit in this amendment is the premise that consensual sexual activity between young persons who are relatively close in age should not be prohibited (provided that the act is other than that of sexual intercourse, since the prohibition against sexual intercourse with females under 14 remains in the *Criminal Code*). This was a major step which assumed, in an information vacuum, that this form of behaviour was not harmful to the younger person.[254]**

2. **The law traditionally has refused to recognize the consent of a person who willingly subjects himself or herself to physical harm (as a means of sexual gratification) at the hands of another. Remarkably, the 1983 amendments left this principle intact where the "victim" is an adult, but provided that, where the complainant was under 14 and the accused was less than three years older than the complainant, the complainant's consent to**

such conduct was a good defence to the charge.[255] In the Committee's judgment, this was a serious legislative oversight.

3. As noted earlier, the 1983 amendments set out certain "aggravating" factors which will elevate a sexual assault into a more serious form of offence. These factors, for example, the use or threatened use of a weapon, the threatening of or causing of bodily harm to the complainant, gang attacks, or the wounding or maiming of the complainant, may be the most prevalent aggravating circumstances against *adult* sexual victims, but they are not particularly relevant to sexual assaults on children, as indicated by the Committee's research findings. Different "aggravating" factors come into play where the sexual victim is a child, for example, the very nature of the sexual act in which the child is compelled to engage, and the legal or social relationship between the child and his or her assailant.

4. Although the 1983 amendments removed the requirement of corroboration in sexual cases,[256] they did not reform the general legal principles which apply to children's evidence. Many sexual offences against children are committed in private places when the child is alone with the offender. Consequently, in prosecutions of sexual offences against children, the testimony of the child victim typically is crucial to proving that the offence was committed. Canadian law places serious fetters both on the opportunity of a child to testify in court at all, and on the legal effect of the child's testimony, if received. Here again, the 1983 amendments ignored the special needs of the child sexual victim.

5. Under the former law, the *Criminal Code* stated certain presumptions which made it easier to prove the offence of unlawful sexual intercourse with a girl 14 or 15. The 1983 amendments repealed these presumptions, which will make it more difficult to prove this offence. This can only be explained as a legislative oversight.

6. Although the 1983 amendments provided additional protection against the identification of sexual victims in the media, the victims of the offences of unlawful sexual intercourse with a female under 16 and of "indecent act" (which applies to the act of indecent exposure) did not receive such protection.[257]

   Here again, the interests of child sexual victims were not dealt with in the 1983 changes to the *Criminal Code*. Further, such protection from identification as was provided extends neither to official court transcripts nor to the legal reporting services, a situation which is clearly documented by the Committee's research findings.

Other implications of the 1983 amendments are considered in the following chapters of this section of the Report.

Criminal Law Reform Act, 1984 (Bill C-19)

Bill C-19 received its First Reading in Parliament on February 7, 1984. This Bill introduced several proposed amendments to the *Criminal Code* relating to a number of matters specified in the Committee's Terms of Reference.

Consequential Amendment to Incest Offence

The Committee concurs that section 150(3) of the *Criminal Code* should be amended to provide greater protection to a victim of incest.[258] It has recommended that the sanction should not apply to a person who has sexual intercourse under restraint, duress or fear of the person with whom he or she has the sexual intercourse. **The Committee sharply rejects, however, the Bill's archaic proposal to continue to confine this protection to female victims and to provide that the court may give them a discharge only after a determination of their "guilt" and after being satisfied that they committed the offence by reason only of restraint, duress or fear. The Committee strongly believes that no victim of incest should have to suffer a determination of guilt in addition to the harm of the offence itself.**

Obscenity

The Committee endorses the Bill's clarification that the obscenity provisions of the *Criminal Code* may apply to "any matter or thing" and are not limited to printed publications.[259] The proposal to allow crime, horror, cruelty, violence or sex to constitute obscenity may prove useful in taking action against degrading representations of adult men and women.

Soliciting

As indicated in this Report, the Committee supports making the offence of soliciting applicable to prospective customers as well as to prostitutes, and defining "public place" to include a motor vehicle located in or on a public place.[260] In addition, **in order to deter persons who seek to use young prostitutes, the Committee has recommended amending the *Criminal Code* to provide for a separate offence of buying or trying to buy sexual acts with a person under 18 years-old.**

Communicating Venereal Disease

The Committee is in agreement with the Bill's proposal to repeal the offence of communicating a venereal disease.[261] In connection with the repeal of this offence, the Committee has recommended a number of initiatives to provide improved protection for children and youths from health risks associated with sexually transmitted diseases.

Restitution

In the Bill, "restitution" includes payment of money by the offender to the victim, as well as the restoration of property.[262] These reparations can include payment for special damages and loss of income or support incurred as a result

of bodily injury arising from an offence, as well as punitive damages. **In its review of provincial criminal injuries compensation boards, the Committee concluded that it is essential that the physical and emotional pain and suffering experienced by the victims of sexual assault be explicitly recognized in the enabling legislation of each jurisdiction.**

In light of the development of the provincial Boards to date as an important resource for assistance to victims of sexual assaults, the Committee believes that the primary emphasis should remain on publicizing services provided by existing provincial programs and on ensuring that they are adequately funded.

Dangerous Offenders

The Bill completes the process of deleting reference to the sexual offences in the definition of "serious personal injury offence."[263] As pointed out in chapter 37, before the January, 1983 amendments an offence or attempt to commit an offence of rape, indecent assault on a female, indecent assault on a male, sexual intercourse with a female under 14 or 14 and 15, and gross indecency, were considered to be "serious personal injury offences." Prior to the proclamation of Part XXI of the *Criminal Code* in 1977, a conviction for the offences of or attempts to commit buggery and bestiality would ground dangerous sexual offender applications. Since the January, 1983 amendments, the only sexual offences mentioned in section 687(b), which defines "a serious personal injury offence", are the new sexual assault offences and attempts to commit them. The Bill defines serious personal injury offence in part as an offence "for which the offender may be sentenced to imprisonment for ten years or more." A number of major sexual offences do not meet this requirement. Whether the application proceeds under section 688(a) (pattern of repetitive behaviour) or under 688(b) (conduct in any sexual matter showing failure to control sexual impulses), it must be shown that there has been a conviction for "a serious personal injury offence".

A conviction for a sexual offence against a child provides a valuable indicator of serious criminal conduct. Reference to the sexual assaults in the definition of serious personal injury offence was deleted in the Bill in order to emphasize that with a few stated exceptions, *any* indictable offence involving violence or endangering life or safety is a "serious personal injury offence". However, the Committee has found that serious sexual offences against children more often involve threats or coercion than violence or danger to life or safety. Since the provisions in the Bill (like the present provisions in the *Criminal Code*) depend upon establishing a conviction for a serious personal injury offence, the Bill's provisions may provide less protection for children than is currently afforded by the *Criminal Code* provisions.

At present, an application can be made under either section 688(a) or 688(b). In the case of sexual offenders, it is usually made under the latter provision which requires, in addition to a serious personal injury offence, proof

that "the offender, by his conduct in an sexual matter including that involved in the commission of the offence for which he has been convicted, has shown a failure to control his sexual impulses . . . ". The Bill would delete this provision, so that a future application could not be based on it. Section 688(a) provides an alternate basis for an application which requires, in addition to a serious personal injury offence, proof that "the offender constitutes a threat to the life, safety or *physical or mental well-being* of other persons on the basis of evidence establishing . . . a pattern of repetitive behaviour by the offender . . . showing . . . a likelihood of his inflicting severe psychological damage upon other persons . . . in the future." The comparable requirement under the Bill is proof that the offence "forms a part of a pattern of repetitive behaviour by the offender showing a . . . wanton and reckless disregard for the lives, safety or *physical well-being* of other persons." Even if an application under the dangerous offender provisions of the *Criminal Code* were successful, the Committee's findings indicate that unless the criterion of a threat to physical well-being is interpreted liberally, it is unlikely to be met in many cases involving convicted child sex offenders.

In light of the Committee's recommendations concerning dangerous child sexual offenders, the Committee endorses the Bill's proposal to delete mention of the prediction of future behaviour from the dangerous offender legislation. However, several of the other proposed amendments would make the dangerous offender provisions of Bill C-19 less appropriate for providing effective protection in many cases of sexual offences against children since the Bill fails:

1. **To mention any sexual offences in its definition of "serious personal injury offence".**
2. **To specify the conduct by which a sexual offender has disregard for children and youths who constitute the majority of victims.**
3. **To indicate that the behaviour by the offender need not show a disregard for the lives, safety or physical well-being of children and youths who are the victims of sexual offences.**

On the basis of its review, the Committee recommends that new legislation, separate from the dangerous offender provisions, and meeting the above requirements, should be enacted to provide added protection for children and youths against sexual offences. Failing this, in order to secure the necessary protection for children, the dangerous offender provisions should be amended to meet the above requirements.

Constitutional Issues

The sexual abuse and exploitation of children and the access by children to pornographic material are matters which fall within the legislative competence of both Parliament and the provincial legislatures, although in different respects. Parliament has legislative jurisdiction over criminal law and criminal

procedure; the federal *Criminal Code*, in addition to prescribing the rules of procedure in criminal proceedings, contains several offences directed at child sexual abuse, prostitution[264] and obscene publications.[265] The federal *Young Offenders Act* outlines the principles and procedures which apply where a federal offence (for example, sexual assault) is committed by a person under the age of 18. The rules of evidence with respect to proceedings under either of these enactments are also governed by federal law. Further, Parliament has legislative jurisdiction over the establishment, maintenance and management of penitentiaries, and is responsible for providing correctional services (including a mechanism for parole) for offenders who receive a sentence of (or sentences totalling) two or more years of imprisonment.

The legislative jurisdiction of the 10 provincial legislatures and the two territorial councils[266] is also relevant to the Committee's mandate. Each province is responsible for the administration of justice within its borders, including the management of police forces, the prosecution of alleged offenders, the organization of criminal and family courts and the provision of correctional services for offenders who receive a sentence of (or sentences totalling) less than two years' imprisonment. The provinces also have jurisdiction to enact laws concerning child welfare and related matters and to authorize both legal intervention into the family and consequent sanctions where minimum standards of child care are violated. Proceedings under these laws are governed by rules of procedure and evidence enacted at the provincial level. With respect to the issue of access by children to pornographic material, the provinces have jurisdiction to regulate the manner of distribution and sale of publications disseminated within their borders[267] and also to regulate, by way of censorship, classification or other means, the public exhibition of films.[268]

The legal regulation of those matters falling within the Committee's mandate is in some respects a federal, and in other respects, a provincial, responsibility. Until fairly recently in Canada,[269] the important constitutional question has been, not whether a particular law could validly be enacted, but rather which level of government could enact it. With the passage of the Canadian *Charter of Rights and Freedoms*, however, more far-reaching constitutional issues are joined. The *Charter* is binding on all levels of government and guarantees the enjoyment of certain basic rights and freedoms "subject only to such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society." The *Charter* now constitutes part of the supreme law of Canada. Any law that is inconsistent with its provisions is, to the extent of the inconsistency, of no force or effect. Accordingly, the interpretation by Canadian courts of these broad constitutional prescriptions will have an important impact on matters within the Committee's mandate.

References

Chapter 12: The Sexual Offences

[1] An example of an obsolete offence is section 154 of the *Criminal Code* which prohibits the seduction of female passengers by male owners or masters of vessels. This offence is a vestige of nineteenth-century immigration legislation enacted to protect women coming to Canada as immigrants (see, *An Act to Amend the Immigration Act, 1869*, S.C. 1872, c. 28, s. 11), which was incorporated into the 1892 *Criminal Code* (*The Criminal Code*, S.C. 1892, c. 29, s. 184). The repeal of former section 139 of the Code in January, 1983 removed the requirement for corroboration, as well as the defence of subsequent marriage to the female passenger.

[2] See Consent, in this chapter.

[3] *Pappajohn v. The Queen* (1980), 52 C.C.C. (2d) 481 (S.C.C.).

[4] *Cr. Code*, s. 144.

[5] *Cr. Code*, s. 145.

[6] Blackstone, 4 *Commentaries on the Laws of England* (1st ed. Oxford: Clarendon Press, 1769), Book 4 at 210.

[7] See *Russell on Crime* (12th ed. London: Stevens & Sons, 1964) vol. 1 at 706-707.

[8] *An Act relating to treasons and felonies*, 1758, 32 Geo. 2, c. 13, s. 7 (Nova Scotia).

[9] *Crimes and Misdemeanors: Of Offences Against the Person*, R.S.N.S. 1864 (3rd Series), c. 164, s. 13.

[10] *An act for consolidating and amending the Statutes in this Province relative to offences against the person*, 1841, 4-5 Vict., c. 27, s. 16 (Prov. of Can.).

[11] *Of homicide and other offences against the person*, R.S.N.B. 1854, c. 149, s. 7.

[12] *An Act relating to the punishment of certain cases of felony and misdemeanor*, Rev. Acts of P.E.I. 1861, c. 28, s. 2.

[13] *An Act respecting offences against the person*, S.C. 1869, c. 20, s. 49.

[14] *An Act to amend the Act respecting offences against the person*, S.C. 1873, c. 50, s. 1.

[15] *The Criminal Code*, S.C. 1892, c. 29, s. 266.

[16] *Ibid.*, s. 266(2).

[17] *An Act to amend the Criminal Code*, S.C. 1921, c. 25, s. 4.

[18] *Martin's Criminal Code, 1955* (Toronto: Cartwright & Sons, 1955) at 233.

[19] *Criminal Code*, S.C. 1953-54, c. 51, s. 136.

[20] *R. v. McCathern* (1927), 48 C.C.C. 54 (Ont. C.A.).

[21] *Ibid.*

[22] *Criminal Law Amendment Act, 1972*, S.C. 1972, c. 13, s. 70.

[23] See, *e.g.*, *R. v. Ellerton* (1927), 49 C.C.C. 94 (Sask. C.A.); *R. v. Galsky* (1930), 54 C.C.C. 199 (Man. C.A.); *R. v. Lovering* (1948), 92 C.C.C. 65 (Ont. C.A.); and *R. v. Thomas* (1951), 100 C.C.C. 112 (Ont. C.A.).

[24] *Criminal Code*, S.C. 1953-54, c. 51, s. 134.

[25] See, *e.g.*, *R. v. Camp* (1977), 36 C.C.C. (2d) 511 (Ont. C.A.); *R. v. Firkins* (1977), 37 C.C.C. (2d) 227 (B.C.C.A.), *leave to appeal to S.C.C. refused* 37 C.C.C. (2d) 227n; *R. v. Daigle* (1977), 37 C.C.C. (2d) 386 (N.B.C.A.); and *R. v. Riley* (1978), 42 C.C.C. (2d) 437 (Ont. C.A.).

[26] See *Cr. Code*, s. 586 and *Canada Evidence Act*, R.S.C. 1970, c. E-10, *as am.*, s. 16(2).

[27] *Criminal Law Amendment Act, 1975*, S.C. 1974-75-76, c. 93, s. 8.

[28] *Ibid.*

[29] (1980), 53 C.C.C. (2d) 225 (S.C.C.).

[30] See, *e.g.*, the remarkable fact situation in *R. v. Konkin* (1983), 3 C.C.C. (3d) 289 (S.C.C.).

[31] *Supra*, note 29 at 232.

[32] *Criminal Law Amendment Act, 1975*, S.C. 1974-75-76, c. 93, s. 44.

[33] *Cr. Code*, s. 246.1, enacted by S.C. 1980-81-82, c. 125, s. 19.

[34] An "assault" is defined in s. 244 of the *Cr. Code*.

[35] See, *e.g.*, *R. v. Rolfe* (1952), 36 Cr. App. R. 4 (C.C.A.).

[36] *Cr. Code*, s. 245.1 (2), enacted by S.C. 1980-81-82, c. 125, s. 19.

[37] Smith and Hogan, *Criminal Law* (London: Butterworths, 1979) at 356. See also Mewett and Manning, *Criminal Law* (Toronto Butterworths, 1978) at 471 *ff.*

[38] [1934] 2 K.B. 498 (C.C.A.).

[39] *R. v. Cullen* (1948), 93 C.C.C. 1 (Ont. C.A.).

[40] *Cullen v. The King* [1949] 3 D.L.R. 241 (S.C.C.).

[41] *R. v. Abraham* (1974), 30 C.C.C. (2d) 332 (Que. C.A.).

[42] *Cr. Code*, s. 246.1(2).

[43] *Cr. Code*, s. 140.

[44] [1951] 2 All E.R. 834 (K.B.D.).

[45] *Ibid.*, at 834.

[46] The obvious problems posed by the English decisions of *Fairclough v. Whipp*; R. v. Burrows (1951), 35 Cr. App. R. 180 (C.C.A.); and *D.P.P. v. Rogers* (1953), 37 Cr. App. R. 137 (D.C.) were addressed in the *Indecency with Children Act, 1960*, c. 33 (U.K.).

[47] [1970] 2 C.C.C. 366 (P.E.I.S.C.).

[48] See also *R. v. Baney*, [1972] 2 O.R. 34 (C.A.).

[49] See generally Gold, *Assaults, Invitations and Attempted Assaults* (1972), 17 C.R.N.S. 266, in which the author reviews the difficulties posed by English and Canadian judicial decisions in this area.

[50] *An Act respecting Offences against the Person*, S.C. 1869, c. 20, s. 53.

[51] *An act to consolidate and amend the Statute Law of England and Ireland relating to offences against the person*, 1861, 24-25 Vict., c. 100, s. 52 (U.K.).

[52] *An Act respecting offences against the person*, R.S.C. 1886, c. 162, s. 41.

[53] *An Act further to amend the Criminal Law*, S.C. 1890, c. 37.

[54] *Ibid.*, ss. 40, 41.

[55] *Ibid.*, s. 13(1).

[56] *R. v. Brasier* (1779), 1 Leach 199; 168 E.R. 202.

[57] *An Act further to amend the Criminal Law*, S.C. 1890, c. 37, s. 13(2).

[58] *Ibid.*, s. 7.

[59] *Ibid.*, s. 3.

[60] *The Criminal Code*, S.C. 1892, c. 29, s. 259(b).

[61] *Cullen v. The King* (1949), 94 C.C.C. 337 (S.C.C.).

[62] See, *e.g.*, *R. v. Yates* (1946), 85 C.C.C. 334 (B.C.C.A.); and *R. v. McBean* (1953), 107 C.C.C. 28 (B.C.C.A.).

[63] *Criminal Code*, S.C. 1953-54, c. 51, s. 134.

[64] *Criminal Law Amendment Act, 1975*, S.C. 1974-75-76, c. 93, s. 8.

[65] Cr. Code, s. 246.4. The prohibition also applies to the offences of incest and gross indecency.

[66] *Criminal Code*, S.C. 1953-54, c. 51, s. 141.

[67] *Criminal Law Amendment Act 1972*, S.C. 1972, c. 13, s. 70.

[68] *Cr. Code*, s. 155. See also s. 158.

[69] *An Act for better proportioning the punishment to the offences in certain cases, and for other purposes therein mentioned*, 1842, 6 Vict., c. 5, s. 5 (Prov. of Can.).

[70] *An Act respecting offences against the person*, S.C. 1869, c. 20, s. 64.

[71] *An Act respecting offences against Public Morals and Public Convenience*, R.S.C. 1886, c. 157, s. 2.

[72] *An Act further to amend the Criminal Law*, S.C. 1890, c. 37, s. 7.

[73] *Ibid.*, s. 3.

[74] *The Criminal Code*, S.C. 1892, c. 29, s. 260.

[75] *Criminal Law Amendment Act, 1972*, S.C. 1972, c. 13, s. 70.

[76] *Cr. Code*, s. 155.

[77] See *R. v. Jacobs* (1817), Russ. & Ry. 331, 168 E.R. 830.

[78] See *R. v. Wishart* (1954), 20 C.R. 163 (B.C.C.A.). The most recent reported case involving bestiality is *R. v. Triller* (1980) 55 C.C.C. (2d) 411 (B.C. Co. Ct.), in which the accused attempted to have intercourse with a male dog.

[79] *Criminal Law Amendment Act, 1968-69*, S.C. 1968-69, c. 38, s. 7.

[80] "Public place" is expressed in s. 138 of the *Cr. Code* as including "any place to which the public have access as of right or by invitation, express or implied."

[81] See *Cr. Code*, s. 158 (2)(b).

[82] *Leviticus*, 18: 22, 23.

[83] Blackstone, *Commentaries on the Laws of England*, (1st ed. Oxford: Clarendon Press, 1769), Book 4 at 215-16.

[84] *Of homicide and other offences against the person*, R.S.N.B. 1854, c. 149, s. 10.

[85] *An Act for consolidating and amending the Statutes in this Province relative to offences against the person*, 1841, 4-5 Vict., c. 27, s. 15 (Prov. of Can.); *An Act respecting offences against the person*, S.C. 1859, c. 91, s. 22.

[86] *Of offences against the person*, R.S.N.S. 1864, c. 164, s. 16.

[87] *An Act respecting offences against the person*, S.C. 1869, c. 20, s. 63.

[88] *An Act respecting offences against Public Morals and Public Convenience*, R.S.C. 1886, c. 157, s. 1.

[89] *The Criminal Code*, S.C. 1892, c. 29, s. 174.

[90] *Criminal Code*, S.C. 1953-54, c. 51, s. 147.

[91] *Cr. Code*, ss. 150(1) and 150(4).

[92] *Cr. Code*, s. 150(3).

[93] *Cr. Code*, s. 150(2).

[94] *Punishment of Incest Act*, 1908, 8 Edw. 7, c. 45 (U.K.).

[95] Hogan, "On Modernising the Law of Sexual Offences", in P.R. Glazebrook, (ed.) *Reshaping the Criminal Law* (London: Stevens & Sons, 1978) at 187-88.

[96] *Of offences against public morals and decency*, R.S.N.B. 1854, c. 145, s. 2.

[97] *An Act relating to the punishment of certain cases of felony and misdemeanor*, Rev. Acts P.E.I. 1861, c. 27, s. 3.

[98] *Of offences against public morals*, R.S.N.S. 1864, c. 160, s. 2.

[99] In *R. v. Halifax Tramway Co.* (1898), 1 C.C.C. 424 (N.S.C.A.), it was held that the authority to repeal provincial legislation in an area that had passed to the federal government was, as a result of Confederation in 1867, vested in the federal Parliament.

[100] Taschereau, *The Criminal Code of Canada, 1893* (3rd ed. Toronto: Carswell, 1893) at 119-20.

[101] *An Act further to amend the Criminal Law*, S.C. 1890, c. 37, s. 8.

[102] *Ibid.*

[103] *The Criminal Code*, S.C. 1892, c. 29, s. 176.

[104] *An Act to amend the Criminal Code*, S.C. 1934, c. 47, s. 6.

[105] *Martin's Criminal Code, 1955*, *supra*, note 18 at 238.

[106] *Bergeron v. The King* (1930), 56 C.C.C. 62 (Que. K.B.).

[107] *Criminal Code*, S.C. 1953-54, c. 51, s. 131(1).

[108] *Can. H. of C. Deb.*, Feb. 12, 1954, at 2037, and Apr. 1, 1954 at 3560.

[109] *An Act to amend the Criminal Code in relation to Sexual Offences and other Offences against the Person*, S.C. 1980-81-82, c. 125, s. 5.

[110] *Criminal Law Amendment Act, 1972*, S.C. 1972, c. 13, s. 70.

[111] A child born out of wedlock is not a "step-daughter", since to be a man's "step-daughter" the child must be a product of his wife's previous marriage: *R. v. Groening* (1953), 16 C.R. 389 (Man. C.A.).

[112] *An Act further to amend the Criminal Law*, S.C. 1890, c. 37, s. 4.

[113] *The Criminal Code*, S.C. 1892, c. 29, s. 183.

[114] *The Criminal Code Amendment Act*, S.C. 1900, c. 46, s. 3 (*re:* s. 186A).

[115] *An Act to amend the Criminal Code and the Canada Evidence Act*, S.C. 1917, c. 14, s. 2.

[116] *Criminal Code*, S.C. 1953-54, c. 51, s. 145.

[117] *An Act to amend the Criminal Code in relation to Sexual Offences and other Offences against the Person*, S.C. 1980-81-82, c. 125, s. 5.

[118] *An Act further to amend the Criminal Law*, S.C. 1890, c. 37, s. 4.

[119] *The Criminal Code*, S.C. 1892, c. 37, s. 183.

[120] *Ibid.*, s. 184(2).

[121] *An Act further to amend the Criminal Code, 1892*, S.C. 1900, c. 46, s. 3 (*re:* s. 183A).

[122] *An Act to amend the Criminal Code*, S.C. 1920, c. 43, s. 5.

[123] *Ibid.*, s. 17.

[124] *Ibid.*, s. 5.

[125] *An Act to amend the Criminal Code*, S.C. 1939, c. 41, s. 10. See generally *R. v. Wilberg* (1955), 113 C.C.C. 257 (Alta. C.A.).

[126] *Cr. Code*, s. 140.

[127] *Cr. Code*, s. 146(3).

[128] The charge of rape was available where the sexual intercourse was perpetrated without the female's consent.

[129] *An act relating to treasons and felonies*, 1758, 32 Geo. 2, c. 13, s. 8 (Nova Scotia).

[130] *Of offences against the person*, R.S.N.S. 1864 (3d ser.), c. 164, s. 14.

[131] *Ibid.*, s. 15.

[132] *An Act for consolidating and amending the Statutes in this Province relative to offences against the person*, 1841, 4-5 Vict., c. 27, s. 17 (Prov. of Can.). See also *An Act respecting offences against the person*, S.C. 1859, c. 91, s. 20.

[133] *An Act for consolidating and amending the Statutes in this Province relative to offences against the person*, 1841, 4-5 Vict., c. 27, s. 17 (Prov. of Can.). See also *An Act respecting offences against the person*, S.C. 1859, c. 91, s. 21.

[134] *Of homicide and other offences against the person*, R.S.N.B. 1854, c. 149, ss. 8, 9.

[135] *Constitution Act, 1867*, 30-31 Vict., c. 3, s. 91, para. 27. The *Constitution Act*, 1982 changes the name of the *British North America Act*, 1867 to the *Constitution Act, 1867*.

[136] *An Act respecting offences against the person*, S.C. 1869, c. 20, s. 51.

[137] *Ibid.*, s. 52.

[138] *Ibid.*, s. 53.

[139] *An Act to amend the Act respecting offences against the person*, S.C. 1877, c. 28, s. 2.

[140] *An Act to punish seduction, and like offences, and to make further provision for the Protection of Women and Girls*, S.C. 1886, c. 52, s. 1(1).

[141] *An Act further to amend the Criminal Law*, S.C. 1890, c. 37, s. 3.

[142] *Ibid.*, s. 12. The intent of this amendment was to "give us a more stringent rule than is found in our present statutes". See *Can. H. of C. Deb.*, Apr. 10, 1890, col. 3161.

[143] *The Criminal Code*, S.C. 1892, c. 29.

[144] *Ibid.*, s. 181.

[145] *An Act to amend the Criminal Code, 1892*, S.C. 1893, c. 32.

[146] In the parliamentary debates on this amendment, it was explained that "Under the section as it stands now, mere illicit connection with a child between the ages of fourteen and sixteen years would not be an offence. There must be the element of seduction, and the object of the amendment to make that element unnecessary. In future, the element is not necessary to constitute the offence". See *Can. H. of C. Deb.*, Mar. 22, 1893, col. 2802.

[147] *An Act to amend the Criminal Code*, S.C. 1920, c. 43, ss.4, 17.

[148] *An Act to amend the Criminal Code*, S.C. 1959, c. 41, s. 9.

[149] See *R. v. Wiberg* (1955), 113 C.C.C. 257 (Alta. C.A.).

[150] *An Act to amend the Criminal Code*, S.C. 1934, c. 47, s. 9.

[151] *Criminal Code*, S.C. 1953-54, c. 51, s. 131(3).

[152] *Martin's Criminal Code, 1955, supra*, note 18 at 228.

[153] *Criminal Code*, S.C. 1953-54, c. 51, s. 134.

[154] *Criminal Law Amendment Act, 1975*, S.C. 1974-75-76, c. 93, s. 8.

[155] See the *Criminal Code*, R.S.C. 1970, c. C-34, *as am.*, s. 586; *Canada Evidence Act*, R.S.C. 1970, c. E-10, *as am.*, s. 16(2).

[156] *Criminal Law Amendment Act, 1972*, S.C. 1972, c. 13, s. 70.

[157] *Cr. Code*, s. 2.

[158] See *R. v. Probe* (1943), 79 C.C.C. 289 (Sask. C.A.); and *R. v. Red Old Man* (1978), 44 C.C.C. (2d) 123 (Alta. Dist. Ct.).

[159] Mewett and Manning, *Criminal Law* (Toronto: Butterworths, 1978) at 423.

[160] *An Act to punish seduction, and like offences, and to make further provision for the Protection of Women and Girls*, S.C. 1886, c. 52, s. 1.

[161] *Criminal Law Amendment Act, 1885*, 48-49 Vict., c. 69, s. 5(2) (U.K.).

[162] S.C. 1886, c. 52, s. 1.

[163] *An Act to amend the Act respecting offences against Public Morals and Public Convenience*, S.C. 1887, c. 48, s. 1.

[164] *The Criminal Code*, S.C. 1892, c. 29, s. 189.

[165] *The Criminal Code Amendment Act*, S.C. 1900, c. 46, s. 3.

[166] *Criminal Code*, R.S.C. 1927, c. 36, s. 219.

[167] *Criminal Code*, S.C. 1953-54, c. 51, s. 140.

[168] The main reason for this amendment was the judgment of the Saskatchewan Court of Appeal in *R. v. Probe* (1943), 79 C.C.C. 289.

[169] Mewett and Manning, *Criminal Law* (Toronto: Butterworths, 1978) at 422.

[170] *R. v. Gasselle* (1934), 62 C.C.C. 295 at 297 *per* MacKenzie J.A. (Sask. C.A.).

[171] *R. v. Schemmer*, [1927] 3 W.W.R. 417 (Sask. Dist. Ct.); *R. v. Blanchard* (1941), 75 C.C.C. 279 (B.C.C.A.). See also *R. v. Zambapys* (1923), 32 B.C.R. 510 (C.A.).

[172] *An Act to punish seduction, and like offences, and to make further provision for the Protection of Women and Girls*, S.C. 1886, c. 52, s. 1.

[173] *An Act further to amend the Criminal Law*, S.C. 1890, c. 37, s. 3.

[174] *An Act to amend the Criminal Code*, S.C. 1920, c. 43, ss. 4, 17.

[175] *Ibid.*

[176] *Criminal Code*, S.C. 1953-54, c. 51, s. 143.

[177] *Martin's Criminal Code, 1955, supra* note 18 at 239.

[178] *An Act to punish seduction, and like offences, and to make further provision for the Protection of Women and Girls*, S.C. 1886, c. 52, s. 2.

[179] See especially *R. v. Comeau* (1912), 19 C.C.C. 350 at 357 *per* Graham E.J. (N.S.C.A.).

[180] *Martin's Criminal Code, 1955*, supra, note 18 at 240.

[181] *An Act to amend the Act respecting Offences against Public Morals and Public Convenience*, S.C. 1887, c. 48, s. 2. See *Can. H. of C. Deb.*, May 5, 1887, at 278.

[182] *The Criminal Code*, S.C. 1892, c. 29, s. 184(2).

[183] *An Act respecting Offences against the person*, S.C. 1869, c. 20, s. 50.

[184] *An Act further to amend the Criminal Law*, S.C. 1890, c. 37, s. 9.

[185] *The Criminal Code*, S.C. 1892, c. 29, s. 684.

[186] *An Act further to amend the Criminal Law*, S.C. 1890, c. 37, s. 5.

[187] *Criminal Law Amendment Act, 1885*, 48-49 Vict., c. 69, s. 11 (U.K.).

[188] See, *e.g.*, *R. v. Jacobs*, *supra*, note 77; *R. v. Wollaston* (1872), 12 Cox C.C. 180 (C.C.A.); and *R. v. Rowed* (1842), 3 Q.B. 180.

[189] *The Criminal Code*, S.C. 1892, c. 29, s. 178.

[190] See *Can. H. of C. Deb.*, Apr. 10, 1890, Cols. 3161, 3162, 3170; and Gigeroff, *Sexual Deviations in the Criminal Law* (Toronto: University of Toronto Press, 1968) at 46-50.

[191] *Criminal Code*, S.C. 1953-54, c. 51, s. 149.

[192] *Cr. Code*, s. 246.4.

[193] *Cr. Code*, s. 718.

[194] Mewett and Manning, *Criminal Law* (Toronto: Butterworths, 1978) at 435.

[195] *Cr. Code*, s. 722.

[196] *R. v. Sidley* (1663), 1 Sid. 168 (K.B.). See generally Smith and Hogan, *Criminal Law* (4th ed. London: Butterworths, 1978) at 436-38.

[197] *An Act for consolidating into one Act and amending the Laws relating to idle and disorderly persons, Rogues and Vagabonds, incorrigible Rogues and other Vagrants in England*, 1822, 3 Geo. 4, c. 40, s. 3.

[198] *An Act respecting Vagrants*, S.C. 1869, c. 28, s. 1. Emphasis added.

[199] *An Act to amend "An Act respecting Vagrants"*, S.C. 1874, c. 43, s. 1.

[200] *An Act to remove doubts as to the power to imprison with hard labour under the Acts respecting Vagrants*, S.C. 1881, c. 31, s. 1.

[201] *An Act respecting offences against Public Morals and Public Convenience*, R.S.C. 1886, c. 157, s. 8.

[202] *An Act further to amend the Criminal Law*, S.C. 1890, c. 37, s. 6.

[203] See Gigeroff, *Sexual Deviations in the Criminal Law* (Toronto: University of Toronto Press, 1968) at 52.

[204] *The Criminal Code*, S.C. 1892, c. 29, s. 177.

[205] *Criminal Code*, S.C. 1953-54, c. 51, s. 130.

[206] Gigeroff, *supra*, note 203, at 57.

[207] *Juvenile Delinquents Act*, R.S.C. 1970, c. J-3.

[208] *The Young Offenders Act*, S.C. 1980-81-82, c. 110, proclaimed in April, 1984.

[209] *Juvenile Delinquents Act*, R.S.C. 1970, c. J-3, s. 2(1), emphasis added.

[210] *The Juvenile Delinquents Act, 1908*, S.C. 1908, c. 40.

[211] *Ibid.*, s. 29.

[212] *An Act to amend the Juvenile Delinquents Act, 1908*, S.C. 1924, c. 53, s. 4.

[213] *An Act to amend the Juvenile Delinquents Act, 1929*, S.C. 1936, c. 40, s. 2.

[214] See, *e.g.*, *R. v. Taylor* (1980), 55 C.C.C. (2d) 468 (P.E.I.S.C.).

[215] *R. v. Haig* (1970), 1 C.C.C. (2d) 299 at 303, *per* Hartt J. (Ont. C.A.).

[216] *Young Offenders Act*, S.C. 1980-81-82, c. 110, proclaimed in April, 1984.

[217] *Ibid.*, s. 3.

[218] *Cr. Code*, s. 168(2).

[219] *Cr. Code*, s. 168(4).

[220] *An Act to amend the Criminal Code*, S.C. 1918, c. 16, s. 1.

[221] *An Act to amend the Criminal Code*, S.C. 1932-33, c. 53, s. 3.

[222] *R. v. Valley* (1931), 57 C.C.C. 378 (Ont. C.A.).

[223] *An Act to amend the Criminal Code*, S.C. 1935, c. 36, s. 1.

[224] *Criminal Code*, S.C. 1953-54, c. 51, s. 157.

[225] *Criminal Law Amendment Act, 1885*, 48-49 Vict., c. 69, s. 6 (U.K.). See generally *R. v. Webster* (1885), 16 Q.B.D. 134.

[226] *An Act to punish seduction, and like offences, and to make further provision for the Protection of Women and Girls*, S.C. 1886, c. 52, s. 4.

[227] *Ibid.*

[228] *An Act further to amend the Criminal Law*, S.C. 1890, c. 37, s. 3.

[229] *The Criminal Code*, S.C. 1892, c. 29, s. 187.

[230] *An Act further to amend the Criminal Code, 1892*, S.C. 1900, c. 46, s. 3.

[231] *Criminal Code*, S.C. 1953-54, c. 51, s. 156.

[232] *The Criminal Code*, S.C. 18^2, c. 29, s. 684.

[233] *Criminal Code*, S.C. 1953-54, c. 51, s. 131.

[234] *Martin's Criminal Code, 1955, supra*, note 18 at 228. See also *R. v. Sam Sing* (1910), 17 C.C.C. 361 (Ont. C.A.).

[235] *Cr. Code*, s. 175(2).

[236] *An Act to amend the Criminal Code*, S.C. 1951, c. 47, s. 13.

[237] For an account of the problems that have arisen in England in charging an offence of this kind, see *R. v. Courtie* and commentary, [1983] Criminal Law Review 634, at 634-635.

[238] The wider principle is that a young person may give a valid consent which is usually a defence where a person is charged with an offence under the *Criminal Code* that requires the absence of consent. Starkman, *The Control of Life: Unexamined Law and the Life Worth Living* (1973), 11 Osgoode Hall Law Journal 175, note 17 at 179, cited in *Report of the Committee on the Operation of the Abortion Law* (Ottawa: Supply and Services Canada, 1977) at 237.

[239] *Criminal Law Amendment Act, 1880*, 43-44 Vict., c. 45, s. 2 (U.K.).

[240] See *R. v. Johnson* (1865), 10 Cox C.C. 114, at 115 (C.C.A.).

[241] Burbidge, *Digest of the Criminal Law of Canada* (Toronto: Carswell, 1890) at 242. The author was Judge of the Exchequer Court of Canada and a former Deputy Minister of Justice.

[242] *An Act further to amend the Criminal Law*, S.C. 1890, c. 37, s. 7.

[243] Of course, even at 14 a girl "might . . . be ignorant of the nature of the act [of sexual intercourse] . . . and of its possible consequences": *R. v. Case* (1850), 1 Den. 580, 169 E.R. 381 at 382, per Wilde C.J.

[244] "R. v. Mehegan, 7 Cox, 145: R. v. Johnson, L. & C. 632, and that class of cases are not now law; *see* R. v. Brice, 7 Man. L.R. 627": Taschereau, *supra*, note 100 at 253.

[245] *Supra*, note 38.

[246] See Burbidge, *supra*, note 241, at 250, note 7.

[247] See *R. v. Day* (1841), 9 Car. & P. 722, 173 E.R. 1026 (fear); *R. v. Case, supra*, note 243 (fraud); *R. v. Nichol* (1807), Russ. & Ry. 131, 168 E.R. 720 (exercise of authority).

[248] See *R. v. Banks* (1838), 8 Car. & P. 575, 173 E.R. 624; *R. v. Meredith* (1838), 8 Car. & P. 587, 173 E.R. 630; *R. v. Martin* (1839), 9 Car. & P. 213, 173 E.R. 807; *R. v. Read* (1849), 3 Cox C.C. 266; *R. v. Cockburn* (1849), 3 Cox C.C. 543; *R. v. Johnson, supra*, note 240; *R. v. Lock* (1872), L.R. 2 C.C.R. 10.

[249] In *R. v. Cockburn, supra*, note 248, the victim was a girl under 5. Her genitals had been injured, and the counsel for the prosecution suggested that the accused might be convicted of an assault, as the consent of the child could not be presumed by reason of her tender age. The reply of the judge shows why care must be taken to ensure that provisions regarding consent are specific in order to provide protection for children. Patteson, J. — "No; that is a mistake of the law. My experience has shown me that children of very tender age may have vicious propensities. A child under ten years of age cannot give consent to any criminal intercourse, so as to deprive that intercourse of criminality, but she can give such consent as to render the attempt no assault." The prisoner was directed to be acquitted.

[250] See *R. v. Read, supra*, note 248, for an example of this in the case law.

[251] The new definition of "assault" in section 244(1) of the *Criminal Code* is for the most part the same as under the old law. Sub-section (2) makes it applicable to the sexual assault offences.

[252] *Criminal Code*, R.S.C. 1970, c. C-34, s. 244(3), *as amended by* S.C. 1980-81-82, c. 125, s. 19.

[253] A husband could, however, be convicted of being a "party" to the rape of his wife.

[254] The nature of the sexual behaviour engaged in between persons in these age groups and which come to police attention is described later in this Report.

[255] *Criminal Code*, R.S.C. 1970, c. C-34, s. 246.1(2), *as amended by* S.C. 1980-81-82, c. 125, s. 19.

[256] *Criminal Code*, R.S.C. 1970, c. C-34, s. 246.4, *as amended by* S.C. 1980-81-82, c. 135, ss. 5, 19.

[257] *Criminal Code*, R.S.C. 1970, c. C-34, s. 442(3), *as amended by* S.C. 1980-81-82, c. 125, s. 25.

[258] *Criminal Law Reform Bill, 1984* (Bill C-19), clause 35.

[259] *Ibid.*, clause 36.

[260] *Ibid.*, clause 48.

[261] *Ibid.*, clause 58.

[262] *Ibid.*, clause 206.

[263] *Ibid.*, clauses 209, 210, 214.

[264] The legal control of prostitution is a matter within the criminal law jurisdiction of the federal Parliament, and the provinces may not enable municipalities to regulate prostitution per se by passing municipal by-laws: *Westendorp v. The Queen* (1983), 2 C.C.C. (3d) 330 (S.C.C.).

[265] Obscene or otherwise unacceptable literary or visual depictions are regulated at the federal level by offences in the *Criminal Code*, as well as by provisions in legislation dealing with customs, importation, and the use of the mails. Parliament also has jurisdiction to regulate the content of radio, television, cable television, and "Pay T.V.", and does so through the Canadian Radio-Television and Telecommunications Commission (C.R.T.C.).

[266] Parliament has granted extensive powers of self-government to the two federal territories. The *Northwest Territories Act* and the *Yukon Act* establish a Council to make "ordinances" for the government of its territory in relation to a long list of subjects corresponding roughly to the list of subjects allocated to the provincial legislatures by s.92 of the *Constitution Act, 1867* (formerly the *B.N.A. Act, 1867*): Hogg, *Constitutional Law of Canada* (Toronto: Carswell, 1977) at 216.

[267] See Hogg, *Constitutional Law of Canada* (Toronto: Carswell, 1977) at 345. Where, however, a municipal by-law seeks to restrict the accessibility to young persons of "erotic" magazines, it is not sufficient for the municipality merely to purport to regulate magazines "appealing to or designed to appeal to erotic or sexual appetites or inclinations". See *Re Hamilton Independent Variety and Confectionery Stores Inc. and City of Hamilton*, not yet reported, January 17, 1983 (Ont. C.A.).

[268] The censorship of films by provincial theatre branches is bound to raise important issues of freedom of speech and of expression under the *Charter of Rights and Freedoms*. The first such test has been the Supreme Court of Ontario decision in *Re Ontario Film and Video Appreciation Society and Ontario Board of Censors*, March 25, 1983. The Divisional Court quashed decisions of the Ontario Censor Board prohibiting the public exhibition of certain films, for the reason that the criteria employed by the Board in so-acting had no legal status and therefore were not "prescribed by law" in accordance with Section 1 of the *Charter*.

[269] The *Canadian Bill of Rights*, R.S.C. 1970, Appendix III (which applies only to laws enacted at the federal level) was passed in 1960. Before 1960, the "checks" on law-makers at the federal or provincial levels were the constraints imposed by the division of legislative powers between them. See generally Tarnopolsky, *The Canadian Bill of Rights from Diefenbaker to Drybones* (1971), 17 McGill L.J. 437.

Chapter 13

Historical Statistical Trends

Crime statistics compiled over the years do not, in themselves, answer the question whether more or fewer sexual offences against children are being committed now than in the past. They do, however, provide an historical perspective against which current enforcement and judicial practices concerning these offences can be compared.

The statistics for the period between 1876 and 1973 on charges laid and convictions for sexual offences indicate that there have been significant changes in: the rates of charges laid; the ratio of convictions to charges; the types and lengths of sentences; conviction rates among different provinces; and the rates of charges and convictions for specific types of sexual offences in which children were victims. The results given in this chapter summarize a more detailed review prepared for the Committee by the Research and Analysis Division of Statistics Canada. They complement the preceding historical review of sexual offences in Canadian law.

Limitations of Historical Criminal Statistics

The compilation of information on charges and convictions from the majority of Canadian courts (with the exception of Alberta, Saskatchewan, Newfoundland and the Yukon) was mandated by the *Criminal Statistics Act* of 1876. In the early years, this information was assembled by the Minister of Agriculture. From 1917 until the termination of the publication of national court statistics in 1973, the responsibility for issuing these reports lay with Statistics Canada. The submission by the courts of statistical reports on their previous year's proceedings was provided initially on a voluntary basis. Since this system was based on voluntary reporting and since there is no way to check the completeness and reliability of the courts' submissions, the accuracy of these statistics is debatable.

In reviewing crime committed against children and youths, a serious limitation of official statistics, both those now being assembled and those compiled in the past, is that no information is provided on the ages of the victims. In the research undertaken by the Committee in co-operation with police forces

across Canada, it was found that the general occurrence records maintained on cases investigated by the police typically contained detailed information about victims, suspects and the criminal acts committed. However, in the assembling of information on crimes reported to authorities across Canada, the emphasis has been to list findings for suspects and for persons who were charged or convicted.

None of the information that is usually available in police records about victims is drawn upon in the aggregation of national and provincial criminal statistics. **For the purposes of official crime statistics, now and in the past, the young victims of criminal offences are invisible. Consequently, it is not known what proportion of all offences reported to the authorities is committed against children and youths. It is often assumed that most victims of sexual offences, both against children and against adults, are females. Even this assumption, however, cannot be documented by resorting to official criminal statistics for the nation.**

In the Committee's judgment, steps should be taken to assemble and publish on a regular basis information that specifies the age and sex of the victims of different offences, including sexual offences. Having this type of information available would provide much needed documentation of the extent to which children and youths are the victims of different types of sexual offences known to the authorities, and could serve as a basis for considering more effective means for their protection.

In addition to the absence of information about victims in official crime statistics, there are a number of other limitations in these sources which preclude their more extensive use in the analysis of the reported occurrence of sexual offences. These limitations include:

- *Unit of Analysis:* There have been shifts in the unit of analysis from counts of *persons* who were charged, to the number of *charges* that were laid against persons. Between 1876-1894, the unit of analysis was the number of persons charged; between 1895-1922, the unit was changed to count the charges that were laid; and between 1923-1925, the unit of analysis reverted to information on persons charged.
- *Amendments to Legislation:* Corresponding to changes in legislation during this period, certain types of offences have disappeared or been redefined and new categories of offences have been introduced.
- *Counting of Juveniles and Adults:* The statistics list offences committed by juveniles and adults for some years, and only give information for adults in other years.
- *Summary and Indictable Offences:* Both summary and indictable offences are reported in some years, while in other years only indictable offences are reported
- *Incomplete Reporting:* Information was not collected uniformly from all provinces during this period. Before 1900 and after 1969, the reports from some provinces were not included.

- *Decline in Reporting*: Toward the end of the 1960s there was a marked decline in the reporting of court statistics. The reasons for this decline have not been fully documented. This reduction may have been due to: increased court caseloads; the rising costs of court administration; and reservations about the utility of these statistics. As a result, the statistics for the 1970s are likely to be less reliable than those for preceding years.

Classification of Sexual Offences

In the sexual offences of the *Criminal Code*, the ages of persons with whom certain sexual acts are proscribed are specified in some instances but not in others. The following classification was developed as an operational framework within which to assess historical trends in the reported occurrence of sexual offences.

1. Sexual offences committed solely against children and youths, for example, sexual intercourse with a female under 14, or with a female 14 or 15.
2. Sexual offences that are committed predominantly against children and youths, for example, incest and the "seduction" offences.
3. Sexual offences that may be, but are not necessarily, committed against children and youths, for example, rape, indecent assault, gross indecency, buggery, and sexual intercourse with a feeble-minded female.

This classification was used as the basis for extracting, for even-numbered years from 1876 to 1972, information on sexual offences from the annual publications, *Criminal Statistics* and *Statistics of Criminal and Other Offences*.

Because of the inherent limitations in the statistical sources, only broad trends are noted and no analysis is given of the persons charged or convicted of sexual offences. Even so, **the statistics clearly indicate that sexual offences reported to the authorities are committed almost exclusively by males.** In 1981, for instance, a total of 4361 adults were charged with rape or indecent assault, of whom only 62 (1.4 per cent) were women (all of whom were charged with indecent assault).

In the early 1900s, the conviction rates for sexual offences committed by juveniles, typically at the 85 to 95 per cent level, were much higher than those for adults. Since that time, these rates have fallen below the level for adults. Of the males who were charged with sexual offences, statistics for recent years indicate that between 10 and 20 per cent are juveniles. In contrast to the rising trend in conviction rates concerning sexual offences committed by adults, comparable rates for juveniles have declined. These changes are most likely a reflection of the phased introduction of other kinds of procedures adopted for the management of juvenile offenders. As the research findings of the Committee indicate, a substantial proportion of sexual offences against children and youths is committed by persons who are themselves juveniles.

Reported Incidence

During the closing years of the nineteenth century, Canadian courts annually reported fewer than 200 charges of sexual offences. During this period, the *number* of persons who were charged ranged between a low of 94 and a high of 160. By the late 1960s, the annual number of persons who were charged with sexual offences had risen, approximately by a factor of 10, to more than 1400 each year.

When the number of reported sexual offences is viewed relative to the size of the Canadian population at different times during this period, broad trends become evident: there was a gradual increase in the reported rates of these offences during the first three decades; a sharp rise occurred during World War I; and, since then, there has been a gradual decline up to the beginning of the 1970s. From an average level of about 3.5 charges per 100,000 persons during the late 1800s, the rate peaked at 11.0 charges in 1914. Subsequently it declined, passing through a series of cyclical fluctuations to a level below 8.0 charges per 100,000 persons. Each of the first four cyclical fluctuations lasted approximately eight years. A more marked decline in the rate of charges started at the end of World War II. The fifth fluctuation occurred in the mid-1960s; this was followed by a drop to 6.0 charges per 100,000 persons, a level comparable to that of about half a century earlier.

The annual rates of charges per 100,000 persons were re-analyzed by the statistical procedure known as linear spline regression analysis. This procedure highlights the nature of the major trends which occurred. Based on this analysis, there were three different periods in the reporting of charges involving sexual offences. These periods correspond generally to the trends in annual rates per 100,000 persons of all charges reported.

The results obtained by using this more powerful statistical procedure show that between 1876 and 1902, there was a gradual increase in: the rates of charges involving sexual offences; and the rates of persons who were charged with sexual offences. These rates rose sharply between 1902 and 1914. During the third period, there was an extended and gradual decline of about 25 per cent between the beginning of World War I and the end of the 1960s.

The results of both methods of statistical analysis (the annual rates and regression analysis) indicate that the early years of World War I were a watershed point of change, namely, from a long-term rise to a subsequent decline in the rates of sexual offences officially reported to the authorities. Not unexpectedly, these rates declined during both World Wars and increased briefly during the postwar years.

Acknowledging the limitations of these statistics, there are two possible explanations which may account for these trends: that the changes in the reported incidence of sexual offences represented basic changes in the extent to which these crimes were occurring at different times; or that the trends noted are only an artifact of changing legal definitions and statistical practices in the

classification and labelling of sexual offences. These explanations can be partially tested by reviewing the relationship of reported sexual offences as a proportion of: all offences committed against persons; and all types of criminal offences. The results of this analysis suggest that the trends which have occurred in the incidence of sexual offences are likely to have stemmed from basic changes in Canadian society, and are less likely to have resulted from variations in the classification procedures or from the incomplete reporting of offences.

If the long-term trends in the rates of reported sexual offences were due to changes in the reliability and completeness in the reporting of court cases, then comparable changes could be expected in the reporting of other categories of offences (for example, offences against persons and all types of offences).

Over the half century between 1876 and 1924, sexual offences (charges and persons charged) rose from 2 per cent of offences against the person to a peak of 18 per cent in 1924. If allowance is made for the reduced reliability of court statistics prior to the mid-1880s, and if 1888 is selected as the starting point, the ratio approximately doubled during this period. A change of the same magnitude occurred in the proportion of sexual offences among all indictable offences, representing a rise from 1.6 per cent to 3.5 per cent.

Between 1924 and 1938, these two proportions declined to about their pre-1900 levels, through a series of small cyclical fluctuations. Then, starting about 1948, the two rates peaked in the late 1950s and early 1960s. Since then, these proportions showed, within an erratic pattern of fluctuation, an overall decline.

The variation in the rates of these two broad categories of offences is comparable over a period of about a century, but is dissimilar to the trends for reported sexual offences. The results indicate that the relative proportions of sexual offences to all offences against the person and to all indictable offences have varied considerably. The sequence of changes occurring in these ratios suggests that there have been four identifiable periods since 1876 in the reported occurrence of sexual offences. The proportion of sexual offences rose during two periods (1876 to 1922; and 1950 to about 1960), and declined during two other periods (1922 to 1950; and from 1960 onward). These fluctuations suggest that the actual occurrence of sexual offences was also rising and falling cyclically, and providing a flow and ebb in the number of cases brought to court.

A number of factors may account for historical changes in the incidence of sexual offences known to the authorities. For example, the rise in the proportion of sexual offences relative to other sorts of offences from 1876 to 1922 can at least partly be attributed to the important legal initiatives undertaken during that period. Although incest had been an offence under the laws of some provinces, it became a federal criminal offence in 1890. The offence of "gross indecency" came into effect the same year. The offence of sexual intercourse with a feeble-minded female was enacted in 1886, and was gradually widened to include females who were insane (1887) and females who were deaf and dumb

(1892). The year 1886 also witnessed the enactment into Canadian criminal law of the offence of seducing girls between the ages of 12 and 16. Similarly, the offence of seduction under promise of marriage, which first appeared in 1886 and which originally applied only to females who were under 18, was widened in 1887 to apply to girls under 21. In 1890, the offence of unlawful "carnal knowledge" of a female, which since 1869 had applied to girls under 12, was extended to include girls 12 and 13. This offence was widened further in 1892: the accused's belief that the girl was older than the prescribed age was made irrelevant to the charge.

Another important criminal law amendment was introduced in 1890; henceforward, it was no defence to a charge of indecent assault on a female or male under 14 that the young person consented to the sexual act. These several legal initiatives, which materially widened the scope of sexual offences relating to children and youths in the last part of the nineteenth century undoubtedly account for much of the trend noted earlier. Other, less identifiable, factors also come into play. Changes in the law of evidence, for example, the necessity of "corroboration", may influence the extent to which alleged sexual offenders can be successfully prosecuted, and may, in turn, influence the charging practices of the police and the Crown. Enforcement policies and resource allocation within police forces and within provincial departments of the Attorney General will also bear on the charging and conviction rates relating to sexual offenders at a given time.

During the past three decades, an increasing number of persons charged with sexual offences has been remanded by the courts for psychiatric and psychological assessment, counselling and treatment. This option has been advocated strongly in briefs put forward by the medical specialty of psychiatry, in which it has been contended that sexual deviates can be dealt with more effectively by means other than imprisonment. From this viewpoint, persons who commit certain types of sexual acts are less appropriately viewed as criminals than as persons having some type of personal disorder, and in a few instances, as persons suffering from mental illness. To the extent that the option of treatment has been taken in the management of suspected sexual offenders in recent years, decisions of this kind would have served to reduce the number of convictions for sexual offences.

Another explanation that may partially account for the cyclical fluctuation in the reported incidence of sexual offences is the changing nature of the moral boundaries of Canadian society. From this perspective, during periods of heightened public morality, the types of marginal behaviour that are tolerated will diminish and, consequently, more of those persons displaying unacceptable behaviours are liable to be caught and to be punished more severely than when social and moral norms are more elastic. Conversely, during periods when society's moral boundaries are more flexible and permeable, there is likely to be greater tolerance of all forms of deviance, and less emphasis on punishment. When this happens, the social controls imposed on persons committing sexual offences are less severe and the punishments meted out are lighter.

If this explanation is valid, then the initial gradual increase in reported sexual offences could possibly have displaced to some degree the reporting of other offences considered to be less serious, resulting in sexual offences appearing as an increase in the proportion of all indictable offences. Following an extended period of growth in the reported rates of sexual offences, the moral boundaries may have subsequently contracted in response to pressures from the community and resulted in the application of more stringent sanctions. A response of this kind would be in force for a number of years until the moral boundaries again became more elastic, resulting in a gradual relaxation of social controls.

There is undoubtedly some validity in each explanation that may be drawn upon to account for the historical variation in the reported incidence of sexual offences. However, there is insufficient documentation to confirm or reject these several hypotheses. Regardless of why the changes happened, and recognizing the methodological limitations in the statistics, there can be little doubt that these changes did occur. **It is reasonable to conclude that in recent decades in Canada, there has been a gradual decline in the reported incidence of sexual offences.** This observation makes no inferences about the actual number of sexual offences which may have occurred in different periods.

Specific Sexual Offences

The composite rates for all types of sexual offences mask variations in the historical incidence of specific types of sexual offences.

At the end of the nineteenth century, the annual charges for sexual intercourse with a minor varied between six and 10 per cent of all sexual offences. The proportion of this offence rose during the early 1900s to a peak of 28 per cent in the 1920s, and then decreased gradually to between six and seven per cent by the late 1960s.

The offences of incest and seduction were not recorded in published statistics until the 1890s. During the period for which information on incest is available, its proportion relative to all sexual offences has fluctuated between a low of 2.9 per cent and a high of 11.0 per cent, without any consistent trends.

The rates for the offence of seduction varied between about 10 and 15 per cent of all sexual offences in the 30 or so years after 1890. In the 1920s, a long-term decline began, decreasing to less than one per cent by 1948. At most, only one or two cases of seduction were recorded in each year during the 1960s and 1970s.

The proportion of rapes to all charges involving sexual offences ranged between about 18 and 28 per cent from 1890 to 1910. This proportion then decreased to a low of 4.3 per cent in 1936, and subsequently rose to an average annual level of about 10 per cent of all sexual offences by the end of the 1960s. Indecent assault, the offence with the highest incidence of the six types of

Table 13.1

Specified Sexual Offences as Percentage of All Sexual Offences (1876-1968)

Year	Sexual Intercourse with Minor*		Incest		Seduction	
	Charges	Convictions	Charges	Convictions	Charges	Convictions
1876	40	21	—	—	—	—
1878	2	2	—	—	—	—
1880	35	18	—	—	—	—
1882	35	21	—	—	—	—
1884	2	2	—	—	—	—
1886	2	2	—	—	—	—
1888	9	8	—	—	—	—
1890	8	13	—	—	10	7
1892	10	12	—	—	8	6
1894	8	10	8	3	13	5
1896	9	12	6	8	11	3
1898	7	7	5	1	16	5
1900	12	13	5	5	15	13
1902	11	12	4	2	16	8
1904	15	13	6	7	9	4
1906	17	21	3	2	13	6
1908	14	18	3	3	13	5
1910	16	18	8	11	11	11
1912	17	15	4	4	9	5
1914	12	12	4	4	17	12
1916	16	16	5	4	12	9
1918	17	21	3	2	15	12
1920	17	17	4	3	13	10
1922	20	21	6	9	15	11
1924	27	26	5	6	13	9
1926	28	28	5	5	13	9
1928	21	18	6	6	10	7
1930	20	18	8	10	9	8
1932	19	15	8	10	9	8
1934	21	18	7	8	22	7
1936	23	22	11	13	6	4
1938	18	17	9	11	4	3
1940	17	16	7	8	3	2
1942	14	13	7	7	3	3
1944	13	13	7	7	2	1
1946	13	11	6	6	1	1
1948	12	12	6	7	1	1
1950	11	10	4	4	0	1
1952	11	20	4	4	1	1
1954	10	10	5	5	1	1
1956	10	9	4	4	1	0
1958	11	12	5	5	0	0
1960	13	14	3	3	0	0
1962	10	10	3	3	—	—
1964	7	7	3	3	—	—
1966	7	7	3	3	—	—
1968**	6	7	3	3	—	—

Research and Analysis Division, Statistics Canada.

*In statistics published prior to 1955 this category was designated "carnal knowledge of a young girl". From 1955 on, it was listed as "sexual intercourse".

**1968 is the terminating year because of the absence of Alberta and Quebec figures for 1970 and later years.

Table 13.1 (continued)

Specified Sexual Offences as Percentage of All Sexual Offences (1876-1968)

Year	Rape		Indecent Assault		Other Sexual Offences	
	Charges	Convictions	Charges	Convictions	Charges	Convictions
1876	—	—	54	72	5	5
1878	48	40	45	53	4	6
1880	—	—	59	74	6	8
1882	—	—	63	75	2	4
1884	39	36	55	57	4	6
1886	41	36	54	59	4	3
1888	23	15	60	68	9	9
1890	29	21	46	53	8	7
1892	19	15	57	61	7	7
1894	18	15	46	58	6	6
1896	22	11	44	58	7	8
1898	21	17	43	59	7	10
1900	28	18	36	46	4	4
1902	20	19	42	50	7	9
1904	18	20	47	55	3	2
1906	16	13	41	45	11	13
1908	18	9	46	58	6	2
1910	14	7	40	42	11	12
1912	12	8	49	57	9	12
1914	11	7	42	48	14	17
1916	9	5	43	49	13	16
1918	9	5	40	41	16	19
1920	8	6	43	41	16	22
1922	8	6	38	38	12	15
1924	6	5	37	42	10	11
1926	6	6	36	40	11	12
1928	11	9	39	44	11	13
1930	9	5	37	41	13	18
1932	8	6	41	44	14	18
1934	7	7	40	44	12	15
1936	4	3	37	34	19	23
1938	8	6	40	41	21	22
1940	7	6	45	45	20	23
1942	7	5	46	46	24	25
1944	9	5	43	44	26	30
1946	8	6	47	47	27	30
1948	10	5	44	43	28	32
1950	13	8	49	50	23	27
1952	13	8	49	52	21	25
1954	7	5	41	39	36	40
1956	11	7	39	39	36	40
1958	11	7	42	41	31	36
1960	10	7	52	51	22	25
1962	8	6	56	55	23	26
1964	10	6	48	46	33	37
1966	9	6	57	58	23	26
1968**	15	10	54	53	22	27

Research and Analysis Division, Statistics Canada.

**1968 is the terminating year because of the absence of Alberta and Quebec figures for 1970 and later years.

sexual offences, varied between 36 and 63 per cent. Its proportion, which was generally stable within the mid-40 per cent range during the late 1890s and early 1900s, dropped to the upper 30 per cent range in the 1920s, and then rose again to the upper 40 per cent range by the early 1950s.

The final category of "other" sexual offences included: buggery, bestiality and gross indecency. As a proportion of all sexual offences, the rates for this "other" category rose to a peak of 36 per cent between 1954 and 1956, and then declined to a range between 20 and 30 per cent in the 1960s.

These results indicate that indecent assault has always been the most frequently reported offence. During this period of almost a century, no other offence ranked consistently in second place. At different times, the second most frequently reported offence was: sexual intercourse with a minor; rape; seduction; and "other" sexual offences. Of the six categories of sexual offences for which historical statistics were reviewed, only incest was consistently at or near the bottom in relation to its reported occurrence.

Two of the three categories of sexual offences in which children are most frequently victims (sexual intercourse with a minor and seduction) peaked in reported occurrence in the 1920s, and subsequently declined. **These results confirm the conclusion (based on the spline regression analysis) that not only had the reported occurrence of all types of sexual offences declined during the several decades preceding the 1970s, but that the proportion of reported sexual offences committed against children had also declined during this period.**

These observations on the changing patterns of sexual offences against children do not indicate the nature of such offences. As the findings given elsewhere in this Report show, some sexual offences, for example, indecent assaults, encompass a wide variety of sexual acts.

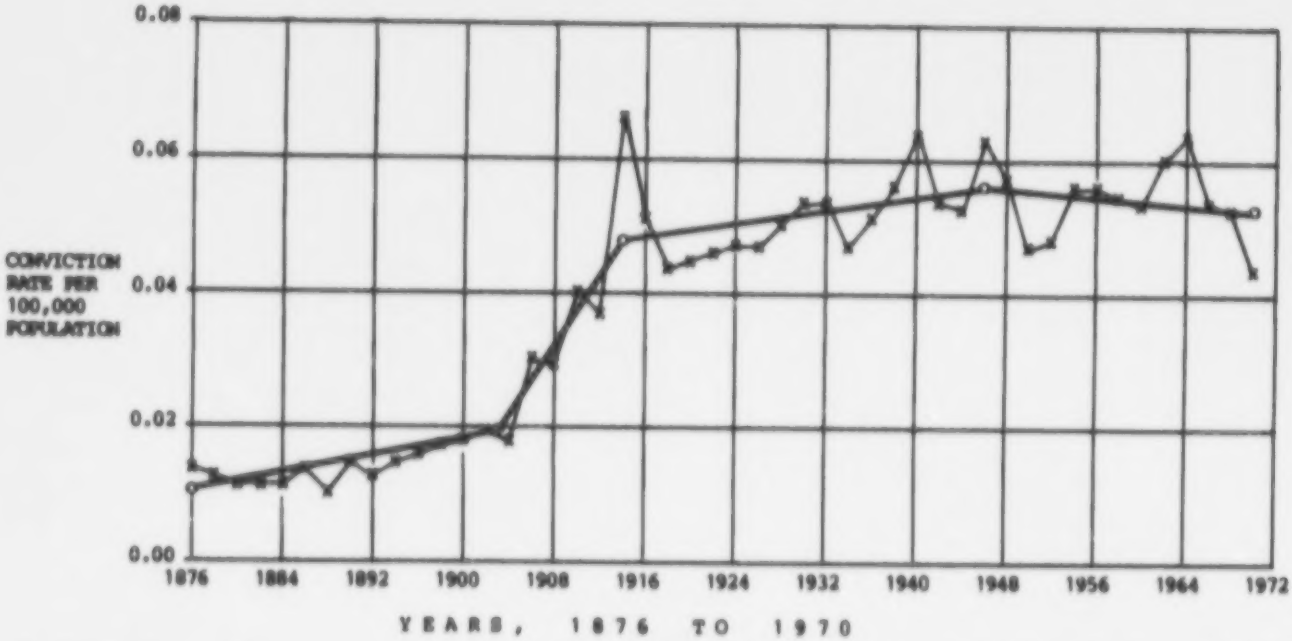
Conviction Rates

In comparison with statistics based on charges and/or persons charged with offences, statistics on convictions offer a clearer indication of the application of prevailing legal standards in different periods. Between 1876 and the early 1970s there was a sharp increase in the number of convictions for sexual offences. During the 1880s and 1890s, there were fewer than 100 convictions annually; the number of the convictions rose to almost 500 each year by around 1930 and then doubled to approximately 1000 convictions per year by 1960. The number of convictions remained about this level until the early 1970s. When the number of convictions is converted to a rate per 100,000 persons, the results indicate that the apparent absolute increase during this period was offset by growth in the Canadian population.

The conviction rates for sexual offences are depicted in Graph 13.1 (based on a spline regression analysis). In comparison with the rates of charges and

Graph 13.1

Sexual Offence Conviction Rate, 1876-1970



RAW DATA SERIES = x
MULTI-SEGMENT LINE = o

SOURCE: Statistics of Criminal and Other Offences, Statistics Canada. Persons convicted selected sexual offences per 100,000 population; Biennial Data

FIRST SLOPE	= 0.00	FIRST TURNING POINT	X:28.50
Y ZERO INTERCEPT	= 0.01		Y:0.02
SECOND SLOPE	= 0.0	SECOND TURNING POINT	X:30.50
Y ZERO INTERCEPT	= 0.07		Y:0.05
THIRD SLOPE	= 0.00	THIRD TURNING POINT	X:70.50
Y ZERO INTERCEPT	= 0.04		Y:0.06
FOURTH SLOPE	= -0.00		
Y ZERO INTERCEPT	= 0.06	TOTAL SSR = 0.00	

Table 13.2

Convictions as Percentages of Charges For: Sexual Offences, Offences Against the Person and All Indictable Offences (1876-1968)

Year (1876-1968)	Type of Offence		
	Sexual Offences	Offences Against Person	All Indictable Offences
	Per Cent	Per Cent	Per Cent
1876	39.9	72.1	76.0
1878	36.4	67.4	71.1
1880	44.2	68.1	69.0
1882	41.9	70.5	70.0
1884	52.5	58.1	57.0
1886	52.0	64.8	63.8
1888	56.4	62.7	63.9
1890	56.3	65.8	67.6
1892	45.7	67.1	67.3
1894	49.4	69.5	69.2
1896	45.9	68.4	70.4
1898	47.7	65.7	71.0
1900	44.9	63.8	68.5
1902	50.0	60.7	66.3
1904	42.6	63.7	68.2
1906	57.0	69.4	74.2
1908	46.8	70.9	74.4
1910	58.9	74.9	76.4
1912	57.1	74.5	77.2
1914	59.1	71.7	76.5
1916	58.3	73.9	80.0
1918	59.7	70.9	62.6
1920	59.7	72.0	79.5
1922	56.4	68.0	74.7
1924	60.6	72.1	78.7
1926	64.6	74.5	79.4
1928	64.8	74.2	81.4
1930	65.2	71.7	81.9
1932	67.2	70.6	83.4
1934	66.6	71.7	84.7
1936	69.8	71.5	84.8
1938	72.5	75.3	85.5
1940	76.2	77.3	87.3
1942	76.7	76.8	86.8
1944	71.9	76.7	87.4
1946	76.2	78.6	87.0
1948	71.7	77.0	86.6
1950	76.1	77.7	86.0
1952	76.9	76.2	84.8
1954	82.1	78.6	87.4
1956	80.6	80.6	88.9
1958	82.2	81.4	89.9
1960	81.3	81.6	90.1
1962	82.2	82.3	90.1
1964	83.3	83.5	90.4
1966	80.2	83.1	89.4
1968	76.1	81.0	87.7

Research and Analysis Division, Statistics Canada.

persons who were charged, the conviction rates for sexual offences show greater stability and fewer short-term cyclical fluctuations. During the last quarter of the nineteenth-century, the conviction rates for sexual offences remained relatively stable, rising to a rate of just under 2.0 convictions per 100,000 persons by the turn of the century. During the second period, starting about a decade later, there was a sharp increase: the conviction rate for sexual offences more than doubled during this period. Starting in 1914, and continuing during World War I, there was a brief but sharp decline in the conviction rates for sexual offences. Between the two World Wars, there was a slight increase in these rates; following World War II, there has been an equally slight decrease.

While there was no appreciable change in the conviction rates for sexual offences between the end of World War I and the early 1970s, there was a sharp increase in the proportion of cases resulting in convictions. From 1876 to 1910, this proportion fluctuated between 30 and 52 per cent. Between 1910 and 1922, the proportion remained in a range between 56 and 59 per cent. From 1922 to the 1960s, there was a steady increase: the proportion of cases heard to convictions reached a plateau at above the 80 per cent level. **These results show clearly that, in relation to cases of sexual offences which came to their attention, police and prosecutors have in recent years been more successful in securing convictions for sexual offences than in the past.**

The rates of convictions to charges for sexual offences rose sharply in comparison to comparable rates, which were initially higher for: all offences against the person; and all indictable offences. The sexual conviction rate (as a percentage of charges) was, until the early 1900s, between one-third and one-half of those for the other types of offences (against the person and all indictable offences); it rose to parity with the other two series toward the end of this period.

This increase in the conviction rates for sexual offences occurred in all regions of the country, but was consistently higher in some provinces than in others. During this period of about a century, the rank order of the provinces in terms of these rates remained relatively stable. New Brunswick and Quebec were, in that order, the provinces with consistently the highest conviction rates, while Nova Scotia and Ontario were consistently the provinces with the lowest conviction rates. **These trends suggest that there may have been long-standing differences between provinces in the administration of justice relating to the prosecution of sexual offenders.**

During the 1960s and early 1970s, the range of differences narrowed in the provincial conviction rates for sexual offences. At this time the rates for British Columbia, Alberta, Manitoba, Ontario and Nova Scotia converged into a closer cluster for three categories of offences: sexual offences; offences against the person; and all indictable offences. **These rising and converging rates suggest that in recent times there may have been a more consistent and uniform application of prosecutorial practice than in the past.**

The trends in the ratio of convictions to charges have not been uniform in relation to specific categories of sexual offences. These historical trends for specific categories of sexual offences include:

Variation in Conviction Rates

- High year-to-year variability in conviction rates for sexual intercourse with a minor, incest, and rape.
- High rates in the 1800s for indecent assault. These rates decreased to a relatively low level by the 1970s.

Level of Convictions (relative to the average for all sexual offences)

- Significantly below average for rape.
- Significantly below average for sexual intercourse with a minor.
- Significantly above average for incest.

Provincial Variations

- Quebec was consistently above, and Ontario consistently below, the national average for each category.

These trends in the ratio of convictions to charges suggest that sexual offences in which children have been victims have not been handled differently than those that were committed against adults.

Sentences

The sentences handed down by courts are a measure of the relative gravity with which different types of acts are regarded by the courts. Sentences for sexual intercourse with a minor appear to have become less severe over the years; prior to 1900, over half of the persons who were convicted of this offence were sentenced to a term in penitentiary, but this proportion has subsequently declined. Sentences for incest have generally remained severe; in the 1960s, almost two-thirds of persons convicted of incest were sentenced to penitentiary. Sentences for rape have shown a slow progressive rise in severity; penitentiary terms (two years or more) were imposed in about half of all such convictions around the turn of the century, in contrast to a proportion of almost two-thirds by the 1960s. Indecent assault convictions have, with general consistency, resulted in sentences that have been light, and appear to have gotten progressively lighter. The majority of offenders convicted of indecent assault have been sentenced to incarceration in provincial institutions, with 5-15 per cent of convicted offenders receiving penitentiary terms. The lightest sentences of all have been for sexual offences in the "other" category, especially for the offence of bestiality.

Summary

The review of historical statistics on charges and convictions for sexual offences reveals a number of significant trends in the reported incidence of these offences. Between 1876 and the early 1970s, these changes include:

1. *Incidence of Charges*. The rates of charges for sexual offences rose gradually at the turn of the century, peaked in 1914, and declined in recent decades to a level of about 6.0 charges per 100,000 persons by the early 1970s.

2. *Incidence of Specific Sexual Offences*. Offences comprising sexual intercourse with a minor were initially between six and 10 per cent of all offences, peaked at 28 per cent in the 1920s, and decreased to between six and seven per cent in the 1960s. The rates for incest have fluctuated between 2.9 and 11.0 per cent of all sexual offences. In recent years, there have been few reported cases of seduction.

3. *Conviction Rates*. The conviction rates for sexual offences were at a level just under 2.0 per 100,000 persons in 1900; these rates increased sharply before World War I, and then declined. There has been no appreciable change in the convictions rates for sexual offences between the end of World War I and the early 1970s.

4. *Proportion of Convictions to Charges*. Of the cases of sexual offences that have been brought to court, there has been a sharp increase in the proportion of persons who have been convicted. Between 1876 and 1910, the proportion of convictions to charges was between 30 and 52 per cent; from 1910 to 1922, it rose to a range between 56 and 59 per cent; and from 1922 onward, it increased to a level above 80 per cent.

5. *Provincial Variations*. There have been longstanding differences between provinces with respect to conviction rates for sexual offences. In recent years, there has been a trend towards a convergence in these rates.

6. *Conviction Rates — Children and Adults*. There are no consistent differences in the conviction rates for sexual offences in which children or adults were victims.

7. *Sentences*. The trends for the sentencing of convicted sexual offenders have differed for specific types of sexual offences. Sentences for incest have generally been severe. In contrast, sentences for sexual intercourse with a minor and indecent assault have become less severe in recent years, while those for rape have increased in severity.

Chapter 14

Evidence of Children

A crucial issue in cases of child sexual abuse is whether the young victim will be deemed legally competent to testify. Since the child typically is the only witness to the assault other than the offender (who cannot be compelled to testify), eliciting the child's testimony in court will usually be vital in order to secure a conviction.[1] The legal tests which determine whether a child may testify in court are reviewed in this chapter.

Historical Background

At common law, no person could testify at trial unless he or she had sworn an oath before the court that he or she would speak truthfully;[2] this requirement applied to adults and children alike.[3] The historical rationale behind the oath requirement was to admonish witnesses to speak the truth under pain of divine retribution.[4]

It was recognized in the late nineteenth century, however, that disentitling children from testifying because they did not understand the nature of an oath tended to thwart the protections the criminal law sought to afford them. In 1885, the British Parliament passed a statute (whose long title was *an Act to make further provisions for the Protection of Women and Girls, the suppression of brothels, and other purposes)* which allowed a "child of tender years" to testify in court even though the child's evidence was not taken upon oath.[5] The statute provided that, on charges of "unlawfully and carnally knowing" a girl under the age of 13, or of attempting to do so, the evidence of a child complainant or other child witness of tender years could be received even though unsworn, "provided that no person shall be liable to be convicted of the offence unless the testimony admitted by virtue of this section and given on behalf of the prosecution shall be corroborated by some other material evidence in support thereof implicating the accused."[6]

A comparable provision was enacted by the Canadian Parliament in 1890, and applied to the offences of unlawful carnal knowledge of a girl under the age of 14, or an attempt to do so, and of indecent assault on a female.[7] The

1892 *Criminal Code* incorporated a substantially similar provision.[8] The original *Canada Evidence Act* of 1893 likewise adopted a policy of allowing the unsworn evidence of children to be received and acted upon, provided such evidence was corroborated, and extended it to all proceedings under federal law.[9] The sworn-unsworn distinction with respect to the evidence of young children was later introduced into the *Juvenile Delinquents Act*[10] and into most provincial evidence acts. In the 1955 revision of the Criminal Code, the mandatory and somewhat wider[11] corroboration requirement enacted in 1890 (which applied to the unsworn evidence of children in trials for certain sexual offences) was made applicable to all *Criminal Code* offences, sexually related or not.[12]

Current State of the Law[13]

In trials for sexual offences under the *Criminal Code*, the qualification of a "child of tender years" (namely, a child under 14)[14] to testify is governed by section 16 of the *Canada Evidence Act*,[15] which provides:[16]

> 16. (1) In any legal proceedings where a child of tender years is offered as a witness, and such child does not, in the opinion of the judge, justice or other presiding officer, understand the nature of an oath, the evidence of such child may be received, though not given upon oath, if, in the opinion of the judge, justice or other presiding officer, as the case may be, the child is possessed of sufficient intelligence to justify the reception of the evidence, and understands the duty of speaking the truth.
>
> (2) No case shall be decided upon such evidence alone, and it must be corroborated by some other material evidence.

Most provincial[17] and territorial evidence acts contain a similar provision,[18-20] as did the recently repealed *Juvenile Delinquents Act*.[21] The law presumes that a child of 14 years of age or older has the capacity to understand the nature of an oath and hence to give sworn evidence.[22] Accordingly, the great majority of problems of competency arise with children under 14 who are called as witnesses at criminal or civil trials.

Under section 16 of the *Canada Evidence Act* and analogous provisions, when a child under 14 is offered as a witness, the trial judge conducts an inquiry to determine whether the child is competent to testify. Where the accused is being tried by jury, the jury remains in the courtroom during this inquiry. If the child is eventually ruled competent to testify, whether upon oath or unsworn, the jury may consider the child's conduct at the hearing in assessing the weight which should be given to his or her subsequent testimony.[23]

In the hearing pursuant to section 16, the trial judge must first determine whether the child understands the nature of an oath. The essence of this inquiry is whether the child understands the moral obligation to tell the truth implicit in the taking of an oath.[24] It is not necessary that the child believe in God or in another Supreme Being, nor is it necessary that the child appreciate

the spiritual "consequences" of lying upon oath,[25] whatever they may be.[26] If the child meets this test, he or she may be sworn.

Where, however, the trial judge is not satisfied that the child understands the nature of an oath, a further inquiry must be made to determine whether the child is possessed of sufficient intelligence to justify the reception of the evidence and understands the duty of speaking the truth. If the judge is satisfied that the child has such intelligence and understanding, the unsworn evidence of the child may be heard.[27]

The usual procedure on the inquiry is for the judge to question the child briefly about his or her age, family and schooling, and about the difference between truth and falsehood. After the judge has completed this examination, the respective counsel may ask questions of the child, after which the judge rules on whether the child may testify either under oath, unsworn, or not at all.[28] Canadian courts have held that counsel have an obligation to prepare child witnesses in this respect before the commencement of the trial.[29] In appropriate cases, the trial may be adjourned in order to provide counsel an opportunity to do so.[30]

The law traditionally has assumed that the testimony of children may suffer from certain frailties which diminish its reliability and which render it incautious for a court to make a legal determination on the basis of a child's testimony standing alone. A child's relative immaturity, susceptibility to errors in perception, limited powers of recall and articulation, vulnerability to the persuasive influence of others, and other factors,[31] have variously been put forward as justifying the differential treatment of children's as opposed to adults' evidence.[32] Accordingly, where a child under 14 testifies under oath, the trial judge must nonetheless warn the jury about the possible unreliability of the child's evidence and the danger of acting on the child's uncorroborated evidence.[33] Further, where a child gives unsworn evidence, corroboration of the child's evidence is required as a matter of law.[34]

In proceedings under the *Young Offenders Act*,[35] the qualification of a "child" or a "young person"[36] to testify is governed by sections 60 and 61 of the Act, which provide:

> 60 (1) In any proceedings under this Act where the evidence of a child or a young person is taken, it shall be taken only after the youth court judge or the justice, as the case may be, has
>
> (a) in all cases, if the witness is a child, and
>
> (b) where he deems it necessary, if the witness is a young person, instructed the child or young person as to the duty of the witness to speak the truth and the consequences of failing to do so.
>
> (2) The evidence of a child or a young person shall be taken under solemn affirmation as follows:
>
> I solemnly affirm that the evidence to be given by me shall be the truth, the whole truth and nothing but the truth.

(3) Evidence of a child or a young person taken under solemn affirmation shall have the same effect as if taken under oath.

61 (1) The evidence of a child may not be received in any proceedings under this Act unless, in the opinion of the youth court judge or the justice, as the case may be, the child is possessed of sufficient intelligence to justify the reception of the evidence, and understands the duty of speaking the truth.

(2) No case shall be decided on the evidence of a child alone, but must be corroborated by some other material evidence.

The evidence of children (and young persons) may only be taken under solemn affirmation under the Act. Section 61(1) qualifies section 60(2), with the result that a child's evidence is to be taken under solemn affirmation only where the judge or justice is of the opinion that the child is possessed of sufficient intelligence to justify the reception of the evidence, and understands the duty of speaking the truth.

Requiring the evidence of children to be given under solemn affirmation removes the basis for distinguishing between sworn and unsworn evidence; the provision that "no case shall be decided on the evidence of a child alone, but must be corroborated by some other material evidence" removes the protection afforded by sworn evidence by treating all children's evidence as inherently unreliable. A child who could give evidence under oath in other proceedings is thus at a disadvantage when testifying under the *Young Offenders Act*. The requirement of a solemn affirmation need not have involved removing the protection afforded by sworn evidence. Bill S-33 provides that no corroboration of evidence is required.

Canada Evidence Bill, 1982 (Bill S-33)

Bill S-33, which, if enacted, would repeal the existing *Canada Evidence Act*[37] and introduce significant changes to the Canadian law of evidence, provides:

96. Every witness shall be required, before giving evidence, to identify himself and either to take an oath or make a solemn affirmation at his option, in the form and manner provided by the law that governs the proceeding.

97. (1) Where a proposed witness is a person of seven or more but under fourteen years of age or is a person whose mental capacity is challenged, the court, before permitting that person to give evidence, shall conduct an inquiry to determine whether, in its opinion, that person understands the nature of an oath or a solemn affirmation and is sufficiently intelligent to justify the reception of his evidence.

(2) A party who challenges the mental capacity of a proposed witness of fourteen or more years of age has the burden of satisfying the court that there is a real issue as to the capacity of the proposed witness to testify under an oath or a solemn affirmation.

98. A person under seven years of age or a person who cannot give evidence under section 97 shall be permitted to give evidence on promising to tell the truth if, in the opinion of the court after it has conducted an inquiry, that person understands that he should tell the truth and is sufficiently intelligent to justify the reception of his evidence.

125. (1) No corroboration of evidence is required and no warning concerning the danger of acting on uncorroborated evidence shall be given in any proceeding.

(2) The court shall instruct the trier of fact on the special need for caution in any case in which it considers that an instruction is necessary, and shall in every case give the instruction with respect to

(a) the evidence of a witness who has testified without taking an oath or making a solemn affirmation;

(b) the evidence of a witness who, in the opinion of the court, would be an accomplice of the accused if the accused were guilty of the offence charged;

(c) the evidence of a witness who is proved to have been convicted of perjury; or

(d) a charge of treason, high treason or perjury where the incriminating evidence is that of only one witness.

These proposals would effect a welcome, if modest, liberalization of the competency rules with respect to children's evidence. Although a child between the ages of seven and 14 would be entitled to "affirm" instead of taking the oath, the common criterion for the reception of both sworn and unsworn evidence would continue to be the perceived intelligence of the child. The most significant reform proposed by Bill S-33 is the repeal[38] of section 586 of the *Criminal Code*, which provides that "no person shall be convicted on an offence upon the unsworn evidence of a child unless the evidence of the child is corroborated in a material particular by evidence that implicates the accused." Under Bill S-33, although a trial judge would be required to warn the jury of the special need for caution in acting on the unsworn evidence of a child, the corroboration of a child's unsworn evidence would no longer be required as a matter of law.[39]

Summary

A central term of reference of the Committee was "to conduct a study to determine the adequacy of the laws in Canada in providing protection from sexual offences against children and youths, and to make recommendations for improving this protection." **The Committee is strongly of the view that Canadian children cannot fully enjoy the protections the law seeks to afford them unless they are allowed to speak effectively in their own behalf at legal**

proceedings arising from allegations of sexual abuse. Accordingly, the Committee recommends that there be no special rules of testimonial competency with respect to children; a young person's testimony should be heard and weighed by the trier of fact in the same manner as the testimony of any other witness in the proceedings. Given the generally private nature of child sexual abuse, the overarching legal principle that all relevant evidence should be admissible in court takes on added significance. In the Committee's judgment, those who believe that fetters should be placed on the reception of young children's testimony by way of special competency requirements should bear the onus of demonstrating that the approach advocated by the Committee is contrary to the demands of justice.

The Committee draws support for its approach to children's testimony from the following grounds:

1. To make a child's testimonial competency contingent upon or influenced by the child's age fails to take into account the cognitive and developmental differences among children of the same age and, in the Committee's view, is wrong in principle.

   Further, the common law was itself equivocal in this regard. For example, one eighteenth century case stated that a child under the age of seven years could, in appropriate circumstances, be sworn,[40] while another case, decided in the same century, expressed the view that only a child nine years of age or older could take the oath.[41] In *Sankey v. The King*,[42] Chief Justice Anglin of the Supreme Court of Canada stated that "of no ordinary child over seven years of age can it be safely predicated, from his mere appearance, that he does not understand the nature of an oath."[43] That an age-presumptive test of competency tends to be arbitrary is also borne out by actual judicial experience with Canadian children of different ages. In one case, a child five years and nine months old was deemed competent to take the oath,[44] while in another, a child four years-old was qualified to give unsworn evidence.[45]

2. The legal tests for the reception of children's evidence either upon oath (sworn) or not upon oath (unsworn) have become very close together in practice,[46] notwithstanding that the corroboration requirements are completely different depending on whether the child gives sworn or unsworn evidence. The Committee considers that the subtle practical distinction between these two tests is far too tenuous a basis upon which to support a legal distinction.

3. The Committee's research findings indicate that the conventional assumptions about the veracity and powers of recall and articulation of young children are largely unfounded and, in any event, vary significantly among different children, as they do among adults.

4. Permitting the trier of fact to determine the weight that should be accorded a child's testimony and generally to assess the child's credibility, without "qualifying" the child witness beforehand, is by no means unprecedented in common law jurisdictions. Rule 601 of the United States

Federal Rules of Evidence abolishes all specific grounds of testimonial incompetency, including those relating to children, and renders the child's testimony a matter of weight to be determined by the trier of fact, rather than a matter of admissibility or presumed unreliability.[47] Thirteen states have adopted this standard in proceedings under state criminal law.[48]

The common sense approach to child credibility implicit in Rule 601 also finds strong support in the scholarly writings of the two leading American commentators (Wigmore and McCormick) on the law of evidence.[49] The Committee adopts the following comments of Wigmore:[50]

> A rational view of the peculiarities of child-nature, and of the daily course of justice in our courts, must lead to the conclusion that the effort to measure "a priori" the degrees of trustworthiness in children's statements, and to distinguish the point at which they cease to be totally incredible and acquire suddenly some degree of credibility, is futile and unprofitable. The desirability of abandoning this attempt and abolishing all grounds of mental or moral incapacity has already been noted... The reasons apply with equal or greater force to the testimony of children. Recognizing on the one hand the childish disposition to weave romances and to treat imagination for verity, and on the other the rooted ingenuousness of children and their tendency to speak straightforwardly what is on their minds, it must be concluded that the sensible way is to put the child upon the stand and let it tell its story for what it may seem to be worth. To this result legislation must come.

5. The Committee would add, however, that in the context of child sexual abuse, children's alleged "disposition to weave romances and to treat imagination for verity" is strongly refuted by the research findings obtained in its several national surveys.

The approach to children's evidence advocated by the Committee finds additional support in the *Evidence Code* proposed by the Law Reform Commission of Canada.[51] The Law Reform Commission states, in its commentary on the pertinent provisions of the *Evidence Code*:[52]

> There are no special rules of competency in the Code with respect to children. The frailties inherent in the testimony of immature witnesses should affect the weight of the evidence rather than its admissibility.

In light of these several considerations, the Committee recommends that the *Canada Evidence Act, the Young Offenders Act* and each provincial and territorial evidence act be amended to provide that:

1. **Every child is competent to testify in court and the child's evidence is admissible. The cogency of the child's testimony would be a matter of weight to be determined by the trier of fact, and not a matter of admissibility.**

2. **A child who does not have the verbal capacity to reply to simply framed questions could be precluded from testifying.**

3. The court shall instruct the trier of fact on the need for caution in any case in which it considers that an instruction is necessary.

In the Committee's view, these reforms would help to ensure that Canadian children receive the full benefit of the protection the law seeks to afford them.

References

Chapter 14: Evidence of Children

[1] Eliciting the child's testimony in court will not be necessary where the accused enters a guilty plea, or where the Crown secures the probative testimony of other witnesses.

[2] Schiff, *Evidence in the Litigation Process* (Toronto: Carswell, 1978) at 141.

[3] *R. v. Brasier* (1779), 168 E.R. 202.

[4] Schiff, *supra*, note 2.

[5] *Criminal Law Amendment Act, 1885*, 48 & 49 Vict., c. 69, s. 4. (U.K.).

[6] *Ibid.*

[7] *An Act further to amend the Criminal Law*, S.C. 1890, c. 37, s. 13.

[8] *The Criminal Code, 1892*, S.C. 1892, c. 29, s. 685.

[9] *The Canada Evidence Act, 1893*, S.C. 1893, c. 31, s. 25.

[10] *The Juvenile Delinquents Act, 1908*, S.C. 1908, c. 40, s. 15.

[11] Section 586 of the *Criminal Code* provides that a child's unsworn evidence must be corroborated "in a material particular *by evidence that implicates the accused*" (emphasis added), while section 16(2) of the *Canada Evidence Act* provides that such evidence must be corroborated "by some other material evidence".

[12] S.C. 1953-54, c. 51, s. 566.

[13] This section has been adapted from the *Report of the Federal/Provincial Task Force on Uniform Rules of Evidence* (Ottawa: Department of Justice, 1981) at 285-91.

[14] See *R. v. Antrobus* (1946), 87 C.C.C. 118 (B.C.C.A.); *R. v. Nicholson* (1950), 98 C.C.C. 291 (B.C.S.C.); and *R. v. Armstrong* (1959), 125 C.C.C. 56 (B.C.C.A.).

[15] *Canada Evidence Act*, R.S.C. 1970, c. E-10.

[16] *Ibid.*, s. 16.

[17] British Columbia: *Evidence Act*, R.S.B.C. 1979, c. 116, s.5.

Alberta: *Alberta Evidence Act*, R.S.A. 1980, c. A-21, s. 20.

Saskatchewan: *Saskatchewan Evidence Act*, R.S.S. 1978, c. S-16, s. 42.

Manitoba: *Manitoba Evidence Act*, R.S.M. 1970, c. E-150, s. 26.

Ontario: *Evidence Act*, R.S.O. 1980, c. 145, s. 18.

Quebec: *Code of Civil Procedure*, R.S.Q. 1980, c. C-25, s. 301.

New Brunswick: *Evidence Act*, R.S.N.B. 1973, c. E-11, s. 24.

Nova Scotia: *Evidence Act*, Cons. Stat. N.S. 1980, c. E-18, s. 57A.

Prince Edward Island: *Family and Child Services Act*, S.P.E.I. 1981, c. 12, s. 30.

Newfoundland: *The Evidence (Amendment) Act*, S. Nfld. 1972, No. 3, s. 2.

[18] Yukon Territory: *Evidence Ordinance*, R.O.Y.T. 1971, c. E-6, ss. 23, 17.

[19] Northwest Territories: *Evidence Ordinance*, R.O.N.W.T. 1974, c. E-4, ss. 23, 17.

[20] The *Report of the Federal/Provincial Task Force on Uniform Rules of Evidence*, *supra*, note 13 at 285-86, is in error in this regard.

[21] *Juvenile Delinquents Act*, R.S.C. 1970, c. J-3, s. 19.

[22] *R. v. Armstrong* (1959), 125 C.C.C. 56 (B.C.C.A.).

[23] *R. v. Bannerman* (1966), 55 W.W.R. 257 (Man. C.A.)., *aff'd* (1966), 57 W.W.R. 736 (S.C.C.); *R. v. Reynolds* (1950), 34 Cr. App. R. 60 (C.C.A.).

[24] *Fletcher v. The Queen* (1982), 1 C.C.C. (3d) 370 (Ont. C.A.); *R. v. Bannerman*, *ibid.*; R. v. Truscott, [1967] S.C.R. 309; *R. v. Taylor* (1970), 1 C.C.C. (2d) 321 (Man. C.A.); and *R. v. Dinsmore*, [1974] 5 W.W.R. 121 (Alta. S.C.).

[25] *R. v. Bannerman*, *supra*, note 23; *Fletcher v. The Queen*, *supra*, note 24. But see *R. v. Budin* (1981), 58 C.C.C. (2d) 352 (Ont. C.A.).

[26] *R. v. Bannerman*, *supra*, note 23.

[27] *R. v. Bannerman*, *supra*, note 23.

[28] *Report of the Federal/Provincial Task Force on Uniform Rules of Evidence*, *supra*, note 13 at 286.

[29] *R. v. Bannerman*, *supra*, note 23; *R. v. Brown* (1951), 99 C.C.C. 305 (N.B.C.A.); and *R. v. Armstrong* (1907), 12 C.C.C. 544 (Ont. C.A.).

[30] *R. v. Cox* (1898), 62 J.P. 89; *R. v. Baylis* (1849), 13 L.T. (O.S.) 509; and *R. v. Nicholas* (1846), 175 E.R. 102.

[31] See generally Lloyd, "The Corroboration of Sexual Victimization of Children" in *Child Sexual Abuse and the Law* (3rd ed. Washington, D.C.: American Bar Association, 1982) at 103 *ff.*

[32] *Ibid.*, at 103-106. See also Melton, Bulkley, and Wilkan, "Competency of Children as Witness" in *Child Sexual Abuse and the Law*, *ibid.*, at 125-39.

[33] *Kendall v. The Queen*, [1962] S.C.R. 469; *R. v. Burdick* (1975), 27 C.C.C. (2d) 497 (Ont. C.A.); and *R. v. Tennant and Naccarato* (1975), 23 C.C.C. (2d) 80 (Ont. C.A.).

[34] *Criminal Code*, R.S.C. 1970, c. C-34, s. 586; *Canada Evidence Act*, R.S.C. 1970, c. E-10, s. 16(2); *Juvenile Delinquents Act*, R.S.C. 1970, c. J-3, s. 19(2).

[35] *Young Offenders Act*, S.C. 1980-81-82, c. 110.

[36] *Ibid.*, section 2(1): In this Act, "child" means a person who is or, in the absence of evidence to the contrary, appears to be under the age of twelve years: "young person" means a person who is or, in the absence of evidence to the contrary, appears to be (a) twelve years of age or more, but (b) under eighteen years of age or, in a province in respect of which a proclamation has been issued under subsection (2) prior to April 1, 1985, under sixteen or seventeen years, whichever age is specified by the proclamation, and, where the context requires, includes any person who is charged under this Act with having committed an offence while he was a young person or is found guilty of an offence under this Act.

[37] *Canada Evidence Act*, R.S.C. 1970, c. E-10.

[38] *Canada Evidence Act, 1982*, Bill S-33, 1980-81-82 (32nd Parl. 1st Sess.).

[39] *Ibid.*, s. 125.

[40] *R. v. Brasier*, *supra*, note 3.

[41] *R. v. Travers* (1726), 93 E.R. 793 (K.B.).

[42] [1927] S.C.R. 436.

[43] *Ibid.*, at 440.

[44] *Strachan v. McGinn* (1936), 50 B.C.R. 394 (S.C.).

[45] *R. v. Pailleur* (1909), 20 O.L.R. 207 (C.A.).

[46] See, *e.g.*, *Fletcher v. The Queen*, *supra*, note 24.

[47] Fed. Rules Evid. Rule 601, 28 U.S.C.A.

[48] Ark. Stat. §28-1001 (Rule 601) (1975); Fla. Stat. §90.601 (1978); Me. R. Evid. 601 (1976); Mich. Evid. Rule 601 (1978); Neb. Rev. Stat. §27-601 (1975); Nev. Rev. Stat. 50.015 (1977); N.J. Stat. §2A:81-1 (1976); N.M. Rule of Evid. 601 (1978); N.D.R. Evid. 601 (1977); Pa. Consol. Stat. tit. 42, §5911 (1978); Wis. Gen. Stat. §906.01 (1975); Wyo. R. Evid. 601 (1978).

[49] Wigmore, 2 *A Treatise on the Anglo-American System of Evidence in Trials at Common Law* (3rd ed. Boston: Little, Brown and Co., 1940) §509 at 600-601; McCormick, *Handbook of the Law of Evidence* (2nd ed. St. Paul: West Publishing Co., 1972) §62 at 140-41.

[50] Wigmore, *ibid.*, at 600-601.

[51] Law Reform Commission of Canada, *Report on Evidence* (Ottawa: Supply and Services Canada, 1977), ss. 50-53.

[52] *Ibid.*, at 87.

Chapter 15

Corroboration

The requirement of corroboration is closely bound up with the different legal tests which determine whether a child may testify at a judicial proceeding. As noted in Chapter 14, where a child gives evidence not under oath (unsworn evidence), the child's testimony needs to be corroborated, namely, there must exist some additional evidence which is consistent with the child's story and which tends to confirm his or her credibility as a witness. **Although Canadian law relating to corroboration, particularly in the context of sexual offences, has undergone significant changes in recent years, these statutory reforms have not reflected any change in the conventional assumptions about the credibility of children. Canadian legal doctrine continues to assume that a young child's testimony is inherently untrustworthy.**

This chapter reviews the nature of corroborative evidence, the situations in which it is required by law, and the conventional justifications for requiring that a young person's testimony be corroborated.

The Nature of Corroboration

Recent decisions of the Supreme Court of Canada[1] have tended to cast aside "the technical *impedimenta* with which the idea of corroboration has increasingly been loaded and return(ing) to the conceptual basics."[2] The Supreme Court has held that the notion of corroboration at common law simply requires that there be confirmation of a material particular of the evidence of the witness whose testimony needs to be corroborated. The key issue is whether the witness's credibility is strengthened by other pertinent evidence, regardless of whether such evidence also serves to implicate the accused.[3] In relation to this issue, the *Criminal Code*[4] and the *Canada Evidence Act*[5] contain statutory provisions which, by their very wording, restrict the scope for judicial reassessment of the corroboration requirement for the unsworn evidence of young children. The provision under the *Young Offenders Act*[6] affects all children's evidence which may be received, since under the Act the evidence of a child may be taken only under solemn affirmation.

The Required Quality of Corroborative Evidence

Essentially, corroboration is evidence, independent of the witness whose testimony requires corroboration, that tends to show that the testimony of such witness is true. Where corroboration of a witness's testimony is required, the trier of fact must determine whether the witness is credible and, if so, whether the testimony of the witness is strengthened or confirmed (corroborated) by other evidence that is independent of the witness's testimony. Corroboration therefore serves to bolster the reliability of a witness whose testimony might otherwise (for a variety of reasons) be considered untrustworthy.[7]

Evidence Which May Constitute Corroboration

Corroboration has proven to be an elusive concept in the law of evidence, and the various verbal formulae which judges have used to explain its nature are less instructive than the actual decisions they have reached in particular cases. Before considering corroboration in the context of sexual offences, two general observations should be borne in mind. First, where corroboration of a witness's testimony is required, it is for the judge to determine whether, as a matter of law, there is evidence which may constitute corroboration. It is for the *jury* to determine whether corroborative inferences should in fact be drawn.[8] Second, although corroboration is a general concept, whether particular facts may constitute corroboration is a situation-specific problem for the trial judge. Canadian courts have continually emphasized that what may afford corroboration in one case may not afford it in another; it all depends on the circumstances of the particular case.

The nature of potentially corroborative evidence in sexual cases may usefully be grouped into three broad categories: corroboration based on the *complainant's* condition or behaviour at the time of, or after, the sexual incident; corroboration based on the *accused's* condition or behaviour at the time of, or after, the sexual incident; and corroboration based on *other factors*.

Corroboration Based on the Complainant's Condition or Behaviour at the time of, or after, the Sexual Incident

The following circumstances have been considered to constitute corroboration of a fact in issue, in the particular circumstances of each case:

- Torn clothing of the complainant and bruises found on the complainant.[9]
- The distressed condition of the complainant soon after the assault.[10]
- Medical evidence of injuries to the complainant's sexual organs.[11]
- Traces of the complainant's presence at the scene of the sexual assault.[12]
- The emotional state of the complainant on reporting the incident.[13]

- The screams and flight of the complainant from the scene of the sexual assault.[14]
- The complainant's pronounced emotional trauma in the days following a sexual assault.[15]

Evidence of the complainant's prompt complaint is *not* corroborative of his or her evidence against the accused, since it lacks the quality of independence.[16]

Corroboration Based on the Accused's Condition or Behaviour at the time of, or after, the Sexual Incident

The following circumstances have been considered to constitute corroboration of a fact in issue, in the particular circumstances of each case:

- The flight of the accused after the sexual assault.[17]
- Traces of the accused's presence at the scene of the assault.[18]
- Inadequate denial or silence by the accused.[19]
- False statements by the accused, implying his guilty conscience.[20]
- The accused's attempt to bribe the complainant to drop the charges.[21]
- The accused's giving of false or contradictory testimony.[22]

The accused's failure to testify at trial may *not* be used for the purpose of drawing corroborative inferences.[23]

Corroboration Based on Other Factors

A variety of other factors has been considered to constitute corroboration of the complainant's testimony, in the particular circumstances:

- The coincidence of the same type of venereal disease in the accused and the complainant.[24]
- Evidence of the accused's longstanding "guilty passion" for the complainant, coupled with evidence of opportunity.[25]
- Similar fact evidence concerning earlier assaults on other persons by the accused, in like circumstances.[26]
- Forensic evidence, such as the presence of semen on the complainant's underclothes.[27]

The mere fact that the accused had the opportunity to perpetrate the act may *not* be used for the purpose of drawing corroborative inferences. It does not sufficiently connect the accused with the crime, in the absence of other inculpatory circumstances.[28]

Prior to the amendments introduced in January, 1983, the *Criminal Code* stipulated that corroboration was required in order to convict a person accused

of certain sexual offences on the evidence of only one witness (usually the complainant).[29] The provision requiring corroboration in these circumstances was repealed in January, 1983[30] and section 246.4 of the *Criminal Code* provides that:

> 246.4 Where an accused is charged with an offence under section 150 (incest), 157 (gross indecency), 246.1 (sexual assault), 246.2 (sexual assault with a weapon, threats to a third party or causing bodily harm) or 246.3 (aggravated sexual assault), no corroboration is required for a conviction and the judge shall not instruct the jury that it is unsafe to find the accused guilty in the absence of corroboration.

For the sexual offences to which this section applies, it is clear that corroboration of the complainant's testimony is no longer an issue. With respect to other sexual offences, however, especially the offences of buggery[31] and sexual intercourse with an under-age female,[32] the legal position concerning a complainant's uncorroborated testimony is less clear. Corroboration is still required for the offences relating to procuring[33] and the communication of venereal disease.[34]

The reforms introduced in January, 1983 did not affect the requirement of corroboration for young persons' testimony. Section 586 of the *Criminal Code* provides that:

> 586. No person shall be convicted of an offence upon the unsworn evidence of a child unless the evidence of the child is corroborated in a material particular by evidence that implicates the accused.

The *Canada Evidence Act*[35] and provincial evidence acts[36] also contain provisions regarding the necessity for corroboration of the unsworn testimony of a child, and the *Young Offenders Act*[37] requires corroboration of all children's testimony. Although the January, 1983 amendments improve the evidentiary position of the *adult* sexual victim, they do little to improve that of the *child* sexual victim. Accordingly, complex legal issues concerning whether one child may corroborate the evidence of another child,[38] or whether it is dangerous to convict on the basis of a child's sworn testimony,[39] will continue to arise in trials of sexual offences involving young persons.

Corroboration of Evidence of Children

That the testimony of adult sexual victims is no longer considered by Canadian law to be inherently untrustworthy is apparent from the enactment of section 246.4 of the *Criminal Code*, which explicitly removes the requirement of corroboration in most sexual cases, and which provides that the judge shall not instruct the jury that it is unsafe to convict in the absence of corroboration. It remains to examine the reasons why the law continues to treat the evidence of young children with caution and to scrutinize these reasons in light of the Committee's research findings.

In *Kendall v. The Queen*,[40] Mr. Justice Judson of the Supreme Court of Canada made the following observation:

> The basis for the rule of practice which requires the judge to warn the jury of the danger of convicting on the evidence of a child, even when sworn as a witness, is the mental immaturity of the child. The difficulty is fourfold: 1. His capacity of observation. 2. His capacity of recollection. 3. His capacity to understand questions put and frame intelligent answers. 4. His moral responsibility.

With respect to these presumed testimonial frailties of children, the Committee's findings are illuminating (see Chapter 7, *Dimensions of Sexual Assault*, and Chapter 24, *Police Investigation*). In the National Police Force Survey, it was found that the vast majority of sexual assaults on children were considered to be "founded" by the police and that the reports of young children were typically perceived by the police to be both truthful and sufficiently detailed. It would appear that, at least in the context of child sexual abuse, the requirement of corroboration for a young child's testimony has traditionally been based on both untested and unfounded assumptions about the intrinsic reliability of children's evidence.

Summary

The Committee considers that the current state of the law with respect to the corroboration of an "unsworn" child witness's testimony is unacceptable for the following reasons:

1. The legal tests for the reception of children's evidence either upon oath (sworn) or not upon oath (unsworn) have come very close together in practice,[41] notwithstanding that the corroboration requirements are completely different depending on whether the child gives *sworn* or *unsworn* evidence.The Committee considers this an arbitrary distinction.

2. With respect to the unsworn evidence of a child, the statutory wording of section 586 of the *Criminal Code*, is different from the wording of section 16(2) of the *Canada Evidence Act*, in the absence of any indication whether the corroboration required by the sections differs depending on the legal context in which the issue of corroboration arises. Section 586 of the *Criminal Code* provides that the unsworn evidence of a child must be corroborated "in a material particular by evidence that implicates the accused" and section 16(2) of the *Canada Evidence Act* provides that such evidence must be corroborated by "some other material evidence". The different formulae are illustrative of the arbitrariness with which the evidence of young children has been treated by Canadian legal doctrine.

3. The Committee's research findings indicate that the assumptions on which the special requirement of corroboration for young children's evidence are based, are largely unfounded.

4. A special legal requirement for corroboration of a young child's evidence is unsound in principle. The Committee agrees with the "common sense" approach to witness credibility espoused by Mr. Justice Dickson of the Supreme Court of Canada (now Chief Justice of Canada):[42]

> Rather than attempting to pigeon-hole a witness into a category and then recite a ritualistic incantation, the trial judge might better direct his mind to the facts of the case, and thoroughly examine all the factors which might impair the worth of a particular witness. If, in his judgment, the credit of the witness is such that the jury should be cautioned, then he may instruct accordingly. If, on the other hand, he believes the witness to be trustworthy, then . . . no warning is necessary.

Accordingly, **the Committee recommends:**

1. **That there be no statutory requirement for the corroboration of an "unsworn" child's evidence. The implementation of this recommendation would involve the repeal of section 586 of the *Criminal Code*, section 16(2) of the *Canada Evidence Act*, section 61(2) of the *Young Offenders Act*, and corresponding sections of provincial evidence acts.**

2. **That the statutory corroboration requirements in sections 195(3) [procuring] and 253(3) [communicating a venereal disease] of the *Criminal Code* be repealed.**

3. **For greater certainty, that the *Criminal Code* be amended to provide that the "corroboration not required" provision in section 246.4 of the *Criminal Code* applies to *all* sexual offences, and not only to those offences currently listed in section 246.4.**

These reforms would place the testimony of a child in no better or worse position than that of an adult, which the Committee believes is the correct legal approach in principle. The cogency of a given child's testimony would be a matter of weight to be determined by the trier of fact, not a matter of admissibility or presumed unreliability, as is currently the case. The Committee endorses the comments of the *Law Reform Commission of Canada* in this regard, namely, that judges and juries "have the necessary experience and common sense to evaluate the testimony before them, and in doing so to take into account such matters as its source and the fact that it is unsupported by other evidence."[43]

As the *Law Reform Commission of Canada* has further argued:[44]

> There is no evidence to suggest that [triers of fact, whether a judge or jury] are more likely to be misled by the evidence of accomplices, the victims of certain sexual offences, or young children than by any other witness.

Nor would the reforms recommended by the Committee be inconsistent with the accused's right to make a full answer and defence to the charges

against him or her. The accused retains his or her traditional rights of cross-examination and of address to the jury. Further, the Crown bears the strict onus of proving its case beyond a reasonable doubt.

References

Chapter 15: Corroboration

[1] See, *e.g.*, *Murphy and Butt v. The Queen*, [1977] 2 S.C.R. 603; *Warkentin v. The Queen*, [1977] 2 S.C.R. 355; *Vetrovec v. The Queen* (1982), 67 C.C.C. (2d) 1 (S.C.C.).

[2] *Vetrovec v. The Queen*, [1982], 1 S.C.R. 811 at 819 *per* Dickson J.

[3] *Murphy and Butt v. The Queen*, *supra*, note 1.

[4] *Criminal Code*, R.S.C. 1970, c. C-34, s. 586.

[5] *Canada Evidence Act*, R.S.C. 1970, c. E-10, s. 16(2).

[6] *Young Offenders Act*, S.C. 1980-81-82, c. 110, s. 61(2).

[7] *Phipson on Evidence* (11th ed. 3rd Supp. 1974) at para 1567.

[8] *Taggart v. The Queen* (1980), 13 C.R. (3d) 179 (Ont. C.A.).

[9] *R. v. Harrison* (1956), 23 C.R. 387 (Ont. C.A.).

[10] *R. v. Redpath* (1962), 46 Cr. App. R. 319 (C.C.A.).

[11] *R. v. Huffman* (1958), 28 C.R. 5 (Ont. C.A.).

[12] *R. v. Creemer and Cormier*, [1968] 1 C.C.C. 14 (N.S.C.A.).

[13] *R. v Lindsay* (1970), 24 C.R.N.S. 105 (Ont. C.A.).

[14] *Childs v. The Queen* (1958), 122 C.C.C. 126 (N.B.C.A.).

[15] *R. v. Basken* (1974), 28 C.R.N.S. 359 (Sask. C.A.).

[16] *Thomas v. The Queen*, [1952] 2 S.C.R. 344.

[17] *R. v. Bondy* (1958), 28 C.R. 342 (Ont. C.A.).

[18] *R. v. LaRochelle* (1952), 104 C.C.C. 349 (N.S.S.C.).

[19] *R. v. Christie*, [1914] A.C. 545 (H.L.).

[20] *Budin v. The Queen* (1981), 20 C.R. (3d) 86 (Ont. C.A.).

[21] *R. v. Mazza* (1975), 24 C.C.C. (2d) 508 (Ont. C.A.), *aff'd sub nom. Mazza v. The Queen* (1978), 40 C.C.C. (2d) 134 (S.C.C.).

[22] *R. v. Collerman* [1964], 3 C.C.C. 195 (B.C.C.A.).

[23] *Kolnberger v. The Queen*, [1969] S.C.R. 213.

[24] *R. v. Jones* (1939), 27 Cr. App. R. 33 (C.C.A.).

[25] *R. v. Burr* (1906), 12 C.C.C. 103 (Ont. C.A.).

[26] *R. v. Lawson* (1971), 3 C.C.C. (2d) 372 (Alta. C.A.).

[27] *Warkentin v. The Queen*, *supra*, note 1.

[28] *Burbury v. Jackson*, [1917] 1 K.B. 16.

[29] The former section 139 (1) of the *Criminal Code*, R.S.C. 1970, c. C-34, provided that no accused could be convicted of the following offences on the evidence of only one witness, unless the evidence of that witness was corroborated in a material particular by evidence that implicates the accused:

- s. 148 — sexual intercourse with a feeble-minded female
- s. 150 — incest
- s. 151 — seduction of a female between 16 and 18
- s. 152 — seduction under promise of marriage

s. 153 — sexual intercourse with a step-daughter, foster daughter, or female ward, or with a female employee under 21

s. 154 — seduction of a female passenger on board a vessel

s. 166 — parent or guardian procuring defilement

[30] *An Act to amend the Criminal Code in relation to Sexual Offences and other Offences against the Person*, S.C. 1980-81-82-83, c. 125, s. 19.

[31] In *R. v. Gendreau* (1980), 3 Man. R. (2d) 245, a case involving charges of buggery and gross indecency, the Manitoba Court of Appeal considered that the following charge to the jury was a proper one:

> "Corroboration, therefore, is not strictly necessary. If the complainant is believed and his evidence is sufficient to sustain the charges, then a conviction should be entered. On the other hand it is settled law that it is dangerous to convict on the uncorroborated evidence of the complainant in sexual offences."

See also *R. v. Cullen* (1975), 26 C.C.C. (2d) 79 (B.C.C.A.).

[32] Section 146 of the *Criminal Code* was an offence to which the statutory "corroboration warning rule" applied, prior to the repeal of this provision by the *Criminal Law Amendment Act, 1975*, S.C. 1974-75-76, c. 93, s. 8. On the current status of the common law "corroboration warning rule" in this respect, see:

R. v. Camp (1977), 36 C.C.C. (2d) 511 (Ont. C.A.);

R. v. Daigle (1977), 37 C.C.C. (2d) 386 (N.B.C.A.);

R. v. Firkins (1977), 37 C.C.C. (2d) 227 (B.C.C.A.);

R. v. Cook (1979), 9 CR. (3d) 85 (Ont. C.A.); and

R. v. Riley (1978), 42 C.C.C. (2d) 437 (Ont. C.A.).

[33] *Criminal Code*, R.S.C. 1970, c. C-34, s. 195(3).

[34] *Ibid.*, s. 253 (3).

[35] *Canada Evidence Act*, R.S.C. 1970, c. E-10, s. 16(2).

[36] *Supra*, at note 6.

[37] See *supra*, Chapter 14, "The Evidence of Children", notes 18-21.

[38] The current state of Canadian law with respect to the "mutual corroboration" of children's evidence is as follows:

(i) An unsworn child may not corroborate another unsworn child: *Paige v. The King* (1948), 92 C.C.C. 32 (S.C.C.).

(ii) An unsworn child may not corroborate a sworn child: *Paige v. The King*, *supra*.

(iii) A sworn child may corroborate another sworn child: *R. v. Taylor* (1970), 75 W.W.R. 45 (Man. C.A.).

(iv) A sworn child may corroborate an unsworn child: *R. v. Pottle* (1978), 49 C.C.C. (2d) 113 (Nfld. C.A.).

[39] *Kendall v. The Queen*, [1962] S.C.R. 469; *R. v. Taylor* (1970), 75 W.W.R. 45 (Man. C.A.); *R. v. Parkin*, [1922] 1 W.W.R. 732 (Man. C.A.); *R. v. Burdick* (1975), 27 C.C.C. (2d) 497 (Ont. C.A.); and *R. v. Tennant and Naccarato* (1975) 23 C.C.C. (2d) 80 (Ont. C.A.).

[40] *Ibid.*, at 473.

[41] See, *e.g.*, *Fletcher v. The Queen* (1982), 1 C.C.C. (3d) 370 (Ont. C.A.).

[42] *Vetrovec v. The Queen*, [1982] 1 S.C.R. 811 at 823.

[43] Canada. Law Reform Commission of Canada, *Report on Evidence* (Ottawa: Information Canada, 1977) p. 108.

[44] *Ibid.*

Chapter 16

Complaints by Victims

Until the enactment of Bill C-127 in January, 1983, the admissibility of complaints made by victims of sexual assaults was governed by the common law doctrine of "recent complaint."[1] Historically, the common law took a skeptical view of the testimony of victims of sexual offences, particularly of women who made allegations of rape.[2] Where a victim of a sexual offence failed to complain of the incident at the first "reasonable" opportunity, the trier of fact was entitled and even encouraged[3] to infer that the complainant's allegation against the accused was either totally or substantially untrue.[4] In order to enable the complainant to rebut these prejudicial inferences, a practice developed which allowed the Crown to prove that the victim had made a complaint and to adduce evidence concerning the details of that complaint,[5] provided certain conditions were met. Although the particulars of the complaint could be proved, they could not be considered as evidence of the facts disclosed by the complaint, but only as evidence which confirmed the complainant's credibility and, where consent was in issue, of the absence of the complainant's consent.[6] Further, evidence so introduced could not be used to corroborate any aspect of the Crown's case.[7]

The Supreme Court of Canada summarized the trial judge's responsibilities in dealing with this issue as follows:[8]

> Before admitting a complaint as evidence, the Judge shall hold a *voir dire*[9] to determine:
>
> - Whether there is some evidence which if believed by the *trier of fact* (in this case the jury) would constitute a complaint.
> - That the complaint was not elicited by questions of a "leading and inducing or intimidating character".[10]
> - That it was "made at the first opportunity after the offence which reasonably offers itself."[11]

It has also been held that recent complaint evidence could only be admitted if the complainant testified at trial and that, where the details of the complaint were sought to be elicited from a witness other than the complainant (for example, from the recipient of the complaint), such details were properly introduced only after the complainant had testified.[12]

Amendments Introduced in January, 1983

Section 246.5 of the *Criminal Code* provides:

> 246.5 The rules relating to evidence of recent complaint in sexual assault cases are hereby abrogated.

Accordingly, the common law doctrine of "recent complaint" in sexual assault cases is abrogated, and the admissibility of complaint evidence will henceforward be governed by the general evidentiary rules relating to previous statements of a witness.

That the victim made a complaint will invariably be brought out during the Crown's initial examination of its witnesses. The details of that complaint, however, will be inadmissible unless:

1. The accused alleges or insinuates that the complainant's testimony at trial is a "recent fabrication", in which case the Crown can introduce the complainant's previous consistent statement of complaint and restore the complainant's credibility.[13]

2. There is an inconsistency between the complainant's testimony at trial and the complainant's previous statement of complaint, in which case defence counsel can introduce the previous inconsistent statement and impeach the complainant's credibility.[14]

3. The victim's complaint is otherwise admissible under an exception to the hearsay rule, for example, as a "spontaneous exclamation" or "excited utterance."[15]

The Committee considers that no adverse legal inferences concerning a sexual victim's credibility should be drawn because the victim did not promptly complain to someone after the sexual assault, and to that extent considers that the abrogation of the "recent complaint" doctrine in sexual assault cases is an appropriate legal reform. The Crown will continue to be able to adduce evidence concerning the making of the complaint, and details of the complaint may also be admissible under the general rules of evidence relating to previous consistent statements.

The possible circumstances which might deter a victim from promptly reporting a sexual assault are vastly more complex than those pertaining to the reporting of other sorts of crime. Young children may not even be aware that something aberrant has been done to them, or may not be sufficiently verbal to articulate their complaint in a manner recognized by the law. The offender, who is often a person the child trusts, may have told the child that their joint sexual activity is a "special secret" they share, or may have threatened the child with harm or punishment if the child tells anyone. Where the sexual assault is perpetrated by a family member, the victim may understandably wish to avoid the dire consequences which disclosure may have on his or her

family. Alternatively, the victim may fear being accused of somehow "provoking" the sexual assault, and of having to defend his or her prior sexual conduct and general reputation at subsequent legal proceedings.

The findings of the National Population Survey (see Chapter 6, *Occurrence in the Population*) document the reasons why most persons who were victims of sexual offences committed against them when they were children or youths did not seek assistance. The following case study, taken from the National Police Force Survey, is illustrative of the often compelling circumstances which sometimes deter young sexual victims from making a prompt complaint of the incident.

> A complaint was lodged by the suspect's wife in relation to alleged acts of sexual intercourse and other sexual acts committed against the wife's 12 year-old daughter (the suspect's step-daughter). According to the wife's statement, the suspect had a history of violence, had assaulted her on a number of occasions and once threatened to kill her with a rifle. The wife's statement alleged that her daughter first gave an indication that the suspect had been sexually abusing her when the daughter was three years-old. According to the statement:
>
> > One night I was putting the girls to bed when D. started to cry. I asked and she said I can't tell you because Dad would give me a licking. . . [on being questioned further] she said Dad has been playing with my bummy — I asked which one and she indicated it was her vagina. She said he lifted up my nightie, sat me on his knee, lifted me up and down and put his finger in my vagina. . .
>
> The wife accepted the suspect's denials of wrongdoing, but said she continued to be suspicious. During the daughter's early adolescence, the suspect was alleged to have forced her to have intercourse several times over a period of about a year. About three months after the last of these incidents, the mother became suspicious again because of the "hickies" which the daughter was observed to have. On being questioned, the daughter broke down and related the whole story to her mother.
>
> In her statement, the daughter stated that she delayed in telling her mother of the suspect's activities for fear of being blamed, hated, and possibly even killed for having had sex with her step-father.

Although the Committee agrees with the abrogation of the "recent complaint" doctrine effected in January, 1983, it should be noted that section 246.5 of the *Criminal Code* states only that the "rules relating to evidence of recent complaint in *sexual assault cases* are hereby abrogated."[1] On its face, the section would appear to abrogate the recent complaint doctrine only with respect to the "sexual assault" offences in sections 246.1, 246.2, and 246.3 of the *Criminal Code*. At common law, however, the doctrine of recent complaint applied to all sexual offences, whether or not the complainant's consent was in issue. Further, a number of sexual offences against young persons do not require that the child be "assaulted" in the legal sense, for example, incest, gross indecency and the unlawful sexual intercourse offences. The credibility of a child victim of one of these offences may, accordingly, still be impugned

under the recent complaint doctrine if the child does not complain of the incident at what the court considers to be the first reasonable opportunity.[17] The Committee considers this to be wholly unsatisfactory.

Summary

The Committee recommends that section 246.5 of the *Criminal Code* be amended to provide that:

the rules relating to evidence of recent complaint are abrogated with respect to *all* sexual offences.

Further, the Committee considers that the remarks the child or young person makes on reporting the incident often constitute the most cogent possible evidence, and should not be excluded from the trier of fact's consideration. In the Committee's judgment, this form of evidence should be admissible on the basis of a statutory exception to the hearsay rule. The rules concerning hearsay evidence are discussed in Chapter 17.

References

Chapter 16: Complaints by Victims

[1] See generally the *Report of the Federal/Provincial Task Force on Uniform Rules of Evidence* (Ottawa: Department of Justice, 1981) at 355-59; and MacCrimmon, *Consistent Statements of a Witness* (1979), 17 Osgoode Hall L.J. 285, esp. at 304-14.

[2] Blackstone, IV *Commentaries on the Laws of England* (1st ed. Oxford: Clarendon Press, 1769) at 211; and Hale, I *The History of the Pleas of the Crown*, (London: Sollom Emlyn, 1800) c. 58 at 635.

[3] Where the Crown failed to show that the complainant made a complaint at the first reasonable opportunity, not only was the complaint rendered inadmissible, but the trial judge was required to comment on this failure. If the complainant's consent was at issue, the trial judge was required to instruct himself or the jury that an inference inconsistent with the complainant's evidence of no consent was to be drawn: *R. v. Walker* (1980), 58 C.C.C. (2d) 178 (Que. C.A.); *R. v. Boyce* (1974), 28 C.R.N.S. 336 (Ont. C.A.); *R. v. Kistendey* (1975), 29 C.C.C. (2d) 382 (Ont. C.A.); *R. v. Davidson* (1975), 24 C.C.C. (2d) 161 (Ont. C.A.).

[4] See *R. v. Kistendey* and *R. v. Davidson*, *ibid.*

[5] *R. v. Lillyman*, [1896] 2 Q.B. 167; *R. v. Osborne*, [1905] 1 K.B. 551.

[6] *R. v. Lillyman*, *ibid.*

[7] *Thomas v. The Queen*, [1952] 2 S.C.R. 344; *R. v. Plantus* (1957), 118 C.C.C. 260 (Ont. C.A.); *R. v. Cross*, [1970] 1 O.R. 693 (C.A.); *R. v. Deslaurier* (1977), 36 C.C.C. (2d) 327 (Ont. C.A.).

At one time in Canadian law, however, a prompt complaint did have corroborative potential. See, *e.g.*, *R. v. Bowes* (1909), 20 O.L.R. 111 (C.A.); *Shorten v. The King* (1918), 57 S.C.R. 118; and *R. v. Auger* (1929), 52 C.C.C. 2 (Ont. C.A.).

[8] *Timm v. The Queen* [1981], 2 S.C.R. 315 at 337 *per* Lamer J.

[9] A *voir dire* (sometimes called a trial within the trial) is a hearing conducted by the trial judge specifically to determine some fact on which depends the admissibility of evidence. See Schiff, *Evidence in the Litigation Process* (Toronto: Carswell, 1978) at 900.

[10] See *R. v. Osborne*, *supra*, note 5; *Shorten v. The King supra*, note 7; *R. v. Lebrun*, [1951] O.R. 387 (Ont. C.A.); *R. v. Kulak* (1979), 46 C.C.C. (2d) 30 (Ont. C.A.); *R. v. Waddell* (1975), 28 C.C.C. (2d) 315 (B.C.C.A.); *R. v. Caldwell* (1974), 10 N.S.R. (2d) 187 (C.A.) and *R. v. Bell* (1973), 14 C.C.C. (2d) 225 (N.S.C.A.).

[11] See *R. v. Creemer and Cormier* (1967), 1 C.R.N.S. 146 (N.S.C.A.); *R. v. Hall* (1927), 31 O.W.N. 451 (C.A.); *R. v. Bodechon* (1964), 50 M.P.R. 184 (P.E.I.C.A.); *R. v. MacNeil* (1976), 16 N.S.R. (2d) 366 (C.A.); *R. v. Hickey* (1980), 31 N.B.R. (2d) 147 (Q.B.); and *R. v. Jones*, [1945] 4 D.L.R. 515 (P.E.I.C.A.).

[12] *Timm v. The Queen*, *supra*, note 8; *R. v. Cook* (1979), 9 C.R. (3d) 85 (Ont. C.A.); *R. v. Gillingham* (1981), 65 C.C.C. (2d) 42 (N.S.C.A.); *R. v. Lebrun*, *supra*, note 10.

[13] See generally the *Report of the Federal/Provincial Task Force on Uniform Rules of Evidence*, *supra*, note 1 at 351-82; and MacCrimmon, *supra*, note 1, esp. at 295-304.

[14] *Report of the Federal/Provincial Task Force on Uniform Rules of Evidence*, *ibid.*; MacCrimmon, *ibid.*

[15] *Report of Federal/Provincial Task Force on Uniform Rules of Evidence*, *ibid.* at 233-42; Cross, *supra*, note 2 at 575-93; and Bill S-33 (the proposed *Canada Evidence Act, 1982*, 1980-81-82 (32nd Parl. 1st Sess.) ss. 115-120.).

[16] Emphasis added.

[17] See, *e.g.*, *R. v. Lillyman, supra*, note 5; *R. v. Osborne, supra*, note 5; *R. v. Camelleri*, [1922] 2 K.B. 122; *R. v. Chenier* (1981), 63 C.C.C. (2d) 36 (Que. C.A.); *R. v. Budin* (1981), 58 C.C.C. (2d) 352 (Ont. C.A.), leave to appeal to S.C.C. refused (1981), 58 C.C.C. (2d) 352n; and *R. v. Walters* (1980), 53 C.C.C. (2d) 119 (Ont. C.A.).

Chapter 17

Hearsay

Hearsay may be defined as a statement, other than one made by a person while testifying at a proceeding, that is offered in evidence to prove the truth of the matters asserted in the statement.[1] As a general rule, a hearsay statement is inadmissible in evidence to prove the truth of the matters asserted therein. Although the exclusion of hearsay evidence has been justified on several grounds,[2] the central justification is that the person who originally made the statement cannot be cross-examined to determine the reliability of his or her observations and the meaning which the statement was intended to convey.[3]

At common law, exceptions to this exclusionary rule were established in order to render admissible certain forms of hearsay evidence where, in the circumstances, there was a compelling need to do so and the evidence was thought to have strong circumstantial guarantees of trustworthiness.[4] The nature and extent of these exceptions are highly significant in the context of child sexual abuse, particularly where the child is too young to testify under the current rules of testimonial competency. Where a child is deemed incompetent to testify, statements made by the child indicating or alleging that someone has sexually abused him or her will often be inadmissible in evidence to prove that the child's assertions are true, notwithstanding that the admissibility of the statements for this purpose will often be crucial to the outcome of subsequent legal proceedings. The following are examples of statements made by child sexual victims which under current doctrine would be held inadmissible to prove the truth of the matters asserted in the statements:

- A three year-old asks her daddy if milk comes out of his pee-pee. He says no, and then tells his wife. She later asks her daughter about it, who replies, "Well milk comes out of Susie's dad's pee-pee and it tastes yucky."[5]
- A four year-old boy sits in front of the television drinking soda pop. His dad sees that he is moving the bottle in and out of his mouth in a manner imitating fellatio. His dad asks him what he is doing, and the boy replies that this is what Uncle Joe taught him to do with his "banana".[6]

The following case study, taken from the National Police Force Survey, is also illustrative of how relevant assertions made by a child sexual victim would

be considered inadmissible hearsay statements under current legal doctrine in Canada.

> The victim, a three year-old girl, aroused her parents' suspicions when she announced to them that she was not going to play the "bum game" with A. anymore. The suspect, A., a 19 year-old male, had intermittently been the child's baby-sitter for about a year. The victim was reluctant to disclose the nature of the "bum game" because the suspect had told her not to do so, but she eventually revealed that the game involved mutual oral sex. The incidents were alleged to have occurred on several occasions during the past year.
>
> The suspect denied all allegations and contended that the child was overly imaginative. The suspect suggested that the child might have gained her knowledge of oral sex by watching her parents perform such acts, or from interaction with local children, and that her allegation against him was fabricated. The suspect refused to submit to a polygraph test.
>
> The police occurrence report concluded as follows: "In view of the tender age of the victim and without corroborative evidence, no charges will be laid and this file is concluded here."

The balance of this chapter reviews the exceptions to the hearsay rule that are especially pertinent to investigations of child sexual buse.

Current Exceptions to the Hearsay Rule

The most important exceptions to the hearsay rule[7] in the context of child sexual abuse are those pertaining to records made in the course of a business or professional duty; confessions or admissions by an accused; excited utterances; and statements indicating the declarant's present bodily feeling or state of mind.

Records Made Pursuant to a Business or Professional Duty

In *Ares v. Venner*,[8] the Supreme Court of Canada broadened the common law exception to the hearsay rule pertaining to records made pursuant to a business or professional duty.[9] The case involved an allegation of negligence against the respondent, a physician. The main issue concerned the admissibility of notes (technically hearsay) made by nurses who attended the appellant while he was receiving care in a hospital. In creating this new exception, the Court stated:[10]

> Hospital records, including nurses' notes, made *contemporaneously* by someone *having a personal knowledge of the matters then being recorded* and *under a duty to make the entry or record* should be received in evidence as *prima facie* proof of the facts stated therein. This should, in no way, preclude a party wishing to challenge the accuracy of the records or entries from doing so. Had the respondent here wanted to challenge the accuracy of the nurses' notes, the nurses were present in court and available to be called as witnesses if the respondent had so wished.

The decision of the Supreme Court in *Ares v. Venner*, although referring explicitly only to hospital records, has been taken to settle the law with respect to records of other "businesses" made in analogous circumstances,[11] and is directly pertinent to investigations of child sexual abuse. Hospital, police and social work records kept pursuant to cases of child sexual abuse may be admissible in evidence to prove the truth of the assertions contained therein, without it being necessary that the maker or makers of the entry testify orally concerning it.[12] Although the potential ambit of this common law exception to the hearsay rule is unclear,[13] it is unquestionably germane to the official records (and to the record-keeping practices) of helping agencies that routinely deal with cases of child sexual abuse.

Apart from these developments at common law, most jurisdictions in Canada have enacted statutory provisions mandating the admission into evidence of "business records"[14] and "official medical reports".[15] For example, it has been held that a recognized Children's Aid Society is a "business" within the business records exception to the hearsay rule. Accordingly, a record made by a social worker as part of his or her investigatory role is admissible in evidence to prove the truth of the matters asserted in the record, notwithstanding that the social worker is not called as a witness.[16]

Admissions or Confessions

Admissions. An admission is a statement by, or attributable to, a party which is adverse to his or her case.[17] Admissions have traditionally been viewed as an exception to the hearsay rule, on the basis that a statement which is adverse to the legal position of the person who makes it may be presumed to be true.[18] For example, if, after an alleged sexual assault on a teenager, the accused says to his friend, "I didn't mean to be so rough — things just got out of hand," this statement constitutes an admission which can be admitted in evidence against the accused notwithstanding that the accused does not himself testify.

Where an accused makes an admission to a person other than a "person in authority,"[19] the admissibility of that statement in evidence against him or her is clear. More problematic, however, are cases in which an accused's conduct after the event may arguably be interpreted as an implied admission of culpability on his or her part.[20] In *R. v. Christie*,[21] the accused was charged with indecently assaulting a five year-old boy. The boy's mother and a police constable were examined as Crown witnesses. The constable testified that, after receiving certain information, he went to a field and saw a number of persons standing there, including the accused, the boy and the boy's mother; that she made a complaint to him (the constable) that a man had assaulted her son; and that the boy then said to his mother, "That is the man, mum." The constable then asked the boy which man he meant, whereupon the boy went up to the accused, touched him on the sleeve of his coat, and said, "That is the man." The boy was then asked, "What did he do to you?", in reply to which the boy

gave full particulars of the indecent assault. After the boy's narration, the accused merely stated, "I am innocent."

The House of Lords held that the accused's reply to the boy's allegations was properly admitted and declared that there is no rule of law that statements made in the presence of an accused may only be received in evidence if a foundation for their admission has first been laid by facts from which, in the judge's opinion, a jury might reasonably infer that the accused had implicitly accepted the statements as his own, in whole or in part.[22] It is the function of the trier of fact to determine whether the accused's words, actions, conduct or demeanour at the time the statement is made amounts to an acceptance by him of the statement in whole or in part, and hence as an admission of culpability.[23] This principle has been approved in Canada on several occasions[24] and has direct application to cases of child sexual abuse.[25] The following case study is taken from the National Police Force Survey.[26]

> The grandmother of the victim (a three year-old girl) found her "playing with herself"; the three year-old was apparently masturbating. The grandmother admonished the girl not to do such things, whereupon the girl replied that it was "O.K. because B. (the suspect) plays with me that way." A child welfare agency was promptly notified.
>
> The suspect, B., a 16 year-old male, subsequently admitted to the grandmother that he had assaulted the girl in the manner indicated, and that he had made the girl play with his penis. The incidents occurred during periods when the suspect was babysitting the little girl; the suspect admitted to the grandmother that he had performed similar acts with the young child on several occasions.

Confessions. A confession is a form of criminal admission and is accordingly admissible as an exception to the hearsay rule.[27] Where, however, an accused makes a statement (whether inculpatory or exculpatory)[28] to a "person in authority,"[29] the trial judge must hold a *voir dire* to determine whether the accused's statement was made voluntarily. In the words of Lord Sumner in *Ibrahim v. The King*:[30]

> It has long been established as a positive rule of English criminal law, that no statement by an accused is admissible in evidence against him unless it is shown by the prosecution to have been a voluntary statement, in the sense that it has not been obtained from him either by fear of prejudice or hope of advantage exercised or held out by a person in authority. The principle is as old as Lord Hale.

The so-called "confessions rule" is inextricably bound up with the accused's right not to incriminate himself and with "the clear common law principle that the Crown must establish its case without the assistance of the accused."[31]

> The practical application of the confessions rule is well illustrated by the Supreme Court of Canada decision in *Powell v. The Queen*.[32] The accused was charged with one count of indecent assault on a female and one count of assault causing bodily harm. The complainant, G., and her common law husband, P., were walking on a street in the city in which they resided, accompanied by P.'s dog. The dog got loose and, as G. was pursuing the dog into a

parking lot, she was grabbed from behind and thrown to the ground. Her attacker then kicked her in the face and stomach and tried to pull her slacks down.

P. eventually caught up with G., and saw a man standing over her with his hand raised, as if to strike her. P. gave chase, lost sight of the man he was pursuing, but later caught sight of a man who he was sure was the attacker. The alleged assailant was forcibly restrained and the police were summoned.

The accused first denied having been in the area or having been with any woman. Later, in the police cruiser, and in response to a question by a police officer, the accused said that he had been helping the woman. Still later, the accused reverted to his earlier complete denial.

At trial, no *voir dire* was held to determine the voluntariness of the accused's statement that he had been helping the woman. On the accused's appeal from conviction, the Manitoba Court of Appeal held that, although the trial judge's failure to hold a *voir dire* on the issue of voluntariness may have been in error, no substantial wrong or miscarriage of justice had resulted thereby.

On the accused's further appeal to the Supreme Court of Canada, Mr. Justice de Grandpre, in delivering the judgment of the Court, stated:[33]

> I am unable to accede to the proposition that if a trial Judge directs himself to the question of the voluntariness of a statement and is satisfied on the whole of the evidence of the guilt of the accused, there is no need for a *voir dire* . . . The onus at all times remains with the prosecution to establish that any statement by an accused offered in evidence against him is voluntary in the fullest sense of the word, and that onus was not discharged here . . The admission of the statement without a *voir dire* was a fundamental error which may have effected the outcome of the trial.

Accordingly, the Court allowed the accused's appeal, quashed the conviction and ordered a new trial.

Excited Utterances

An "excited utterance" is a statement made by a person while he or she was under the stress of nervous excitement caused by witnessing a startling event. In order for a declarant's excited utterance to be admitted into evidence as an exception to the hearsay rule, the event giving rise to the statement must have been sufficiently startling to suspend the declarant's reflective faculties, and the statement must have been uttered while the declarant was under the influence of the startling event.[34] These circumstances are thought to ensure the trustworthiness of the statement; on the other hand, such evidence is necessary because it is considered a more reliable source of proof than the declarant's subsequent testimony.[35]

The declarant need not be unavailable as a witness in order for this hearsay exception to operate. Both the declarant and another person who heard the declarant's statement may testify concerning the "excited utterance".[36] For example, if, immediately after being sexually assaulted, a girl makes an hysterical telephone call to the police wherein she indicates the nature of the

assault and the identity of her assailant, both the girl and the police officer who took the call may testify concerning the girl's telephone statement.[37] Alternatively, the statement of a three year-old boy, who runs down the stairs and exclaims to his mother, "Uncle Bob pulled my pee-pee, and it hurts!", would constitute an excited utterance to which the mother could testify, notwithstanding that her son fails to qualify as a witness.[38]

Statements Indicating the Declarant's Present Bodily Feeling or State of Mind

Statements by a declarant indicating his or her present physical condition or state of mind constitute a further exception to the hearsay rule. For example, a four year-old boy might tell his family doctor, "My bum hurts," and indicate the onset of the pain, without offering an explanation as to its cause. This statement, given in evidence by the doctor as part of his testimony, could form part of the Crown's case against an accused charged with buggery.[39] Alternatively, a child might make statements to a social worker which reveal the child's present emotional state and his or her express preference for one dispositional outcome over another.[40]

Summary

Hearsay evidence is dealt with extensively in Bill S-33[41] and, in general, the Committee considers that the treatment of hearsay evidence in this proposed legislation is adequate. Even so, there is one form of crucially relevant evidence in the context of child sexual abuse for which these proposals do not explicitly provide. An out-of-court statement made by a young child which indicates that the child may have been sexually abused is inadmissible hearsay unless the circumstances of the statement fall within one of the established exceptions to the hearsay rule. Given the nature of sexual abuse of young children, however, such statements typically will not fall within any of the established or proposed hearsay exceptions.[42] A young child often is not aware that something aberrant is being done to him or her, and consequently is unlikely to make an "excited utterance" about the incident. Alternatively, a child who is aware that "something is wrong" may be prevented from telling anyone because of threats, fear of reprisals, admonishments of secrecy on the part of the offender, or other pressures. When the child does eventually tell someone, the lapse of time will render the child's statement inadmissible for the purpose of proving the truth of the assertions made in it. **In the Committee's view, neither the exceptions to the hearsay rule at common law, nor the statutory proposals of Bill S-33, offer sufficient opportunities for the out-of-court statements of young children to be admitted in evidence for the purpose of proving that the matters asserted in those statements are true.**

The exceptions to the hearsay rule at common law have traditionally been justified on the dual bases of necessity and presumed trustworthiness. That the

admission into evidence of a young child's express or implied allegation of sexual abuse is necessary in order to reach a proper and just legal determination can scarcely be doubted. Where the child has made such a statement but is deemed legally incompetent to testify in court, the trier of fact will often be precluded from hearing potentially the most relevant evidence in the case, namely, the content of the child's statement. Alternatively, where the child is competent to testify, several considerations combine to justify, in appropriate cases, the narration of the child's statement by the person who received it. As the Wisconsin Supreme Court stated in a 1974 case:[43]

> A young child may be unable or unwilling to remember (as here) all the specific details of the assault by the time the case is brought to trial; or be unwilling to testify, or at least inhibited in doing so from a feeling of fear or shame, or as a result of the strangeness of the courtroom surroundings, particularly with a jury and perhaps members of the general public present. The desirability of avoiding the necessity of forcing a young child to testify to such matters at all has been noted, particularly when the defendent is (as here) a parent or occupies some other close relationship to the child.

Further, where the child does testify in court, his or her perceived credibility as a witness will be a critical factor in the outcome. Allowing the recipient of the child's statement to testify concerning its content would enable the trier of fact to assess the child's credibility on a more realistic basis.

Whether a young child's express or implied allegation of sexual abuse should be assumed to be trustworthy is more problematic. To consider only two of the several factors which operate in this context:[44]

1. A young child is unlikely to verbalize about a form of sexual activity that is foreign to his or her personal experience.[45] As one writer put it, "[t]he child who can describe an adult's erect penis and ejaculation has had direct experience with them."[46]

2. On the other hand, a child's limited verbal capacity may sometimes lead to real ambiguities in the meaning which the child intended his or her statement to convey.[47]

In the Committee's view, whether a child's previous statements relating to his or her sexual abuse should be admitted in evidence as an exception to the hearsay rule is best approached on a case-by-case basis. An inflexible rule, whether inclusionary or exclusionary, would fail to take into account the wide variability of circumstances from one case to the next, and would be wrong in principle.

The Committee recommends that the *Canada Evidence Act*, each provincial and territorial evidence act, and the Quebec *Code of Civil Procedure* be amended in order to provide that:[48]

1. **A previous statement made by a child when under the age of 14 which describes or refers to any sexual act performed with, on, or in the presence of the child by another person.**

2. **Is admissible to prove the truth of the matters asserted in the statement.**

3. **Whether or not the child testifies at the proceedings.**

4. **Provided that the court considers, after a hearing conducted in the absence of the jury, that the time, content and circumstances of the statement afford sufficient indicia of reliability.**

5. **"Statement" means an oral or a recorded assertion and includes conduct that could reasonably be taken to be intended as an assertion.**[49]

The Committee considers that such a provision would strike an appropriate balance between the dictates of necessity and testimonial trustworthiness, and draws support for its conclusion from the enactment of comparable provisions in at least two American jurisdictions.[50]

References

Chapter 17: Hearsay

[1] Law Reform Commission of Canada, *Report on Evidence* (Ottawa: Supply and Services, 1977), s. 27(2)(a) of the proposed *Evidence Code*. This essentially is the definition of hearsay adopted in s. 2 of the proposed *Canada Evidence Act, 1982*, Bill S-33, 1980-81-82 (32nd Parl. 1st Sess.).

[2] In Taylor, *A Treatise on the Law of Evidence* (12th ed. London: Sweet and Maxwell, Ltd., 1931) at 363, the author outlines the reasons for the hearsay rule as follows:

> The term *hearsay* is used with reference to what is done or written, as well as to what is spoken, and, in its legal sense, it denotes that kind of evidence which does not derive its value solely from the credit given to the witness himself, but which rests also, in part, on the veracity and competence of some other person. That this species of evidence is not given upon oath, that it cannot be tested by cross-examination, and that in many cases it supposes some better testimony, which might be adduced in the particular case, are not the sole grounds for its exclusion. Its tendency to protract legal investigations to an embarrassing and dangerous length, its extrinsic weakness, its incompetency to satisfy the mind of the existence of the fact, and the frauds which may be practised with impunity under its cover, combine to support the rule that hearsay evidence is inadmissible.

[3] Tollefson, *Cases and Comments on the Law of Evidence* (2d ed., 1972) at 450.

[4] *Report of the Federal/Provincial Task Force on Uniform Rules of Evidence* (Ottawa: Department of Justice, 1981) at 175.

[5] This example is adapted from Lasnik, *The Sexually Abused Child Act* (unpublished paper, King County Prosecutor's Office, State of Washington, 1981) at 3.

[6] *Ibid.*

[7] For a comprehensive review of the numerous exceptions to the hearsay rule in Canadian law, see the *Report of the Federal/Provincial Task Force on Uniform Rules of Evidence*, *supra*, note 4. The problem of "opinion" or "expert" evidence in child welfare controversies is discussed in Bala, Lilles, and Thompson, *Canadian Children's Law* (Toronto: Butterworths, 1982) at 190-97.

[8] [1970] S.C.R. 608.

[9] See generally Ewart, *Documentary Evidence: The Admissibility at Common Law of Records Made Pursuant to a Business Duty* (1981), 59 Can. Bar Rev. 52; and Lederman, *The Admissibility of Business Records — A Partial Metamorphosis* (1973), 11 Osgoode Hall L.J. 373.

[10] [1970] S.C.R. 608 at 626 *per* Hall J. (Emphasis added.).

[11] *Setak Computer Services Corp. v. Burroughs Business Machines Ltd.* (1977), 15 O.R. (2d) 750 (Ont. H.C.J.).

[12] See Ewart, *supra*, note 9 at 59 *ff.*

[13] *Ibid.*

[14] A review of the pertinent statutory provisions is given in Schiff, *Evidence in the Litigation Process* (Toronto: Carswell, 1978) at 351-52.

[15] *Ibid.*, at 365-67. For discussing the admissibility of medical reports in Ontario child protection proceedings, see Bala, Lilles, and Thompson, *supra*, note 7 at 184-90.

[16] *Re Maloney* (1971), 12 R.F.L. 167 (N.S. Co. Ct.).

[17] *Report of the Federal/Provincial Task Force on Uniform Rules of Evidence*, *supra*, note 4 at 189.

[18] *Slatterie v. Pooley* (1840), 10 L.J.Ex. 8.

[19] For a discussion of the principles which are applied in determining whether the recipient of an accused's admission is a "person in authority", see the *Report of the Federal/Provincial Task Force on Uniform Rules of Evidence*, *supra*, note 4 at 895-96.

[20] *Report of the Federal/Provincial Task Force on Uniform Rules of Evidence*, *supra*, note 4 at 194-95.

[21] [1914] A.C. 545 (H.L.).

[22] See Cross, *Evidence* (5th ed. London: Butterworths, 1979) at 529-30.

[23] *R. v. Christie*, [1914] A.C. 545 at 554 *per* Lord Atkinson (H.L.).

[24] See, *e.g.*, *Hubin v. The King*, [1927] S.C.R. 442; *Chapdelaine v. The King*, [1935] S.C.R. 53; and *Stein v. The King*, [1928] S.C.R. 553. But *cf. R. v. Harrison*, [1946] 3 D.L.R. 690, esp. at 696 (B.C.C.A.).

[25] See *R. v. Horn* (1923), 40 C.C.C. 117 (Alta. C.A.); *R. v. McKevitt* (1936), 66 C.C.C. 70 (N.S.S.C.), and *R. v. Sayegh* (1982), 69 C.C.C. (2d) 84 (Ont. Prov. Ct.).

[26] This case study is from the National Police Force Survey.

[27] *Report of the Federal/Provincial Task Force on Uniform Rules of Evidence*, *supra*, note 4 at 201 *ff.* For empirical data on criminal admissions in the context of child sexual abuse in Toronto, Canada, see Lane, *The Legal Response to Sexual Abuse of Children* (October, 1982) at 52-55.

[28] *Piche v. The Queen* (1970), 12 C.R.N.S. 222 (S.C.C.).

[29] *Supra*, note 19.

[30] [1914] A.C. 599, at 609 (P.C.).

[31] *Report of the Federal/Provincial Task Force on Uniform Rules of Evidence*, *supra*, note 4 at 202.

[32] [1977] 1 S.C.R. 362.

[33] *Ibid.*, at 367, 369.

[34] Wigmore, *Evidence* (Vol. 6, Chadborn rev. 1976) at ss. 1747-1749.

[35] See generally Bulkley, "Evidentiary Theories for Admitting a Child's Out-of-Court Statement of Sexual Abuse at Trial in *Child Sexual Abuse and the Law* (3d ed. Washington, D.C.: American Bar Association, 1982) at 153; and Morgan, *A Suggested Classification of Utterances Admissible as Res Gestae* (1922), 31 Yale L.J. 229.

[36] *Report of the Federal/Provincial Task Force on Uniform Rules of Evidence*, *supra*, note 4 at 236.

[37] See *Ratten v. The Queen*, [1972] A.C. 378 (P.C.).

[38] For Canadian cases in which an "excited utterance" was held to be admissible as an exception to the hearsay rule, see *R. v. Garlaw and Garlaw* (1976), 31 C.C.C. (2d) 163 (Ont. H.C.J.); *R. v. Mulligan* (1973), 23 C.R.N.S. 1 (Ont. S.C.), *aff'd on other grounds* (1974), 26 C.R.N.S. 179 (Ont. C.A.); *R. v. Presley*, [1976] 2 W.W.R. 258 (B.C.S.C.); *R. v. Schwartz* (1978), 40 C.C.C. (2d) 161 (N.S.C.A.); and *R. v. Belliveau* (1978), 41 C.C.C. (2d) 52 (N.S.C.A.).

The American position regarding the admissibility of "excited utterances" of very young children appears to vary considerably from state to state: Bulkley, *supra*, note 35 at 157, and the excellent annotation in 83 A.L.R. 2d 1368, at 1368-1399 (1962). For American cases on this issue in which the child's statement was held *inadmissible*, see *Huntley v. State* (1917), 73 Fla. 800; *Ketcham v. State* (1959), 240 Ind. 107; and *State v. Rothi* (1922), 152 Minn. 73.

[39] See the *Report of the Federal/Provincial Task Force on Uniform Rules of Evidence*, *supra*, note 4 at 236-37.

[40] *Re Harris* (1976), 28 R.F.L. 181 (Ont. Prov. Ct.).

[41] *Canada Evidence Act, 1982*, Bill S-33, 1980-81-82 (32nd Parl. 1st Sess.) ss. 45-73.

[42] See, *e.g.*, *Re S.A.H.* (1982), 30 R.F.L. (2d) 23 (B.C. Co. Ct.). See also Bulkley, *supra*, note 35.

[43] *Love v. State*, 64 Wis. 2d 432 (1974).

[44] See Lloyd, "The Corroboration of Sexual Victimization of Children", in *Child Sexual Abuse and The Law* (3d ed. Washington, D.C.: American Bar Association, 1982) 103, esp. at 105-106.

[45] A. Bernstein and P. Cowan, *Children's Concepts of How People Get Babies* (1975), 46 Child Development 77.

[46] Lloyd, *supra*, note 44 at 105.

[47] See, *e.g.*, *Re S.A.H.* (1982), 30 R.F.L. (2d) 23 (B.C. Co. Ct.).

[48] This proposal is based on s. 2 of the State of Washington's Substitute Senate Bill No. 4461, 1982.

[49] This is the definition of "statement" adopted in s. 2 of the *Canada Evidence Act, 1982*, Bill S-33, 1980-81-82 (32nd Parl. 1st Sess.).

[50] Substitute Senate Bill No. 4461, 1982, s. 2, State of Washington; Family Court Act, State of New York, s. 1046.

Chapter 18

Previous Sexual Conduct

That the common law tended to regard the testimony of female sexual victims as inherently untrustworthy was reviewed in Chapter 15, *Corroboration*,[1] and this tendency had its counterpart in the legal principles relating to the character of the complainant in sexual cases. In prosecutions for a sexual offence involving an assault, two related issues emerge which are of crucial importance to the outcome of the case:

- Has the Crown proven beyond a reasonable doubt that the complainant did not consent to the sexual activity which forms the basis of the charge?; and, more generally,
- Is the complainant perceived to be a credible witness, in the sense that the allegation against the particular accused is a *true* allegation?

The common law incorporated and fostered assumptions relating to both of these issues, namely, that a woman who was sexually experienced would be more likely to have consented to an alleged criminal sexual act than one who was "chaste,"[1] and that such a woman was generally more likely to be an untruthful witness.[2] This chapter elaborates on the common law position and on the pertinent statutory amendments introduced in 1976 and 1983, respectively.

The Position at Common Law[3]

Until 1976 in Canada, the admissibility of evidence concerning the complainant's history of sexual behaviour where the accused was charged with a sexual offence was governed by the common law. The common law rules differed depending on whether such evidence was considered relevant to a material issue (for example, whether the complainant consented to the alleged sexual act) or to a collateral issue (for example, the complainant's credibility).

In prosecutions for rape and indecent assault, the complainant's lack of consent was an element required to be proved by the Crown, and hence was a material issue before the court. At common law, the accused could cross-examine the complainant on matters considered relevant to determining whether she granted or withheld her consent to the sexual act. The common

law reflected the view that a woman who was sexually experienced tended to grant her sexual favours indiscriminately, and hence was more likely to have given her consent to the act that formed the basis of the charge against the accused. Accordingly, the complainant could be cross-examined concerning her prior sexual conduct with the accused,[4] her reputation as a prostitute,[5] and generally, her reputation for "unchastity."[6] The complainant was required to answer these questions and, provided they were deemed relevant to the consent issue, the trial judge had no discretion to excuse the complainant from so answering.[7] If the complainant denied the insinuations or refused to respond to them, the accused could contradict her answers and adduce evidence to substantiate them.[8]

Concerning the issue of the complainant's credibility, the common law position was only slightly less compromising for the complainant. Since it was assumed that a sexually experienced woman or girl was less likely to be truthful than one who was chaste, a complainant could be cross-examined about her sexual conduct in order to impeach her credibility. That the trial judge could intervene[9] and that the complainant's denials did not entitle the accused to adduce evidence contradicting them[10] were somewhat illusory protections; the accused's insinuations as to the complainant's moral character, founded or not, could not fail to influence the trier of fact.

These rules of evidence have justly been criticized on the basis that they shifted the focus of a sexual assault trial from the alleged actions of the accused to the sexual life-style of the complainant.[11] Recent legislative attempts to redress this situation are discussed below.

Amendments Introduced in 1976

In 1976, a provision was introduced into the *Criminal Code* which was intended to afford greater protection to female complainants in sexual cases.[12] It provided that:

> 142. (1) Where an accused is charged with an offence under section 144 [rape] or 145 [attempted rape] or subsection 146(1) [sexual intercourse with a female under 14] or 149(1) [indecent assault on a female], no question shall be asked by or on behalf of the accused as to the sexual conduct of the complainant with a person other than the accused unless
>
> (a) reasonable notice in writing has been given to the prosecutor by or on behalf of the accused of his intention to ask such question together with particulars of the evidence sought to be adduced by such question and a copy of such notice has been filed with the clerk of the court; and
>
> (b) the judge, magistrate or justice, after holding a hearing *in camera* in the absence of the jury, if any, is satisfied that the weight of the evidence is such that to exclude it would prevent the making of a just determination of an issue of fact in the proceedings, including the credibility of the complainant.

As this section of the *Criminal Code* has since been repealed,[13] it is unnecessary to deal with the extensive case law it generated. It is opportune, however, to note the different ways in which this provision failed to provide appropriate protection for female complainants in trials of sexual offences. This failure was precipitated largely by the section's vague wording, which did not make clear whether the common law rules, in so far as they operated to exclude evidence of the complainant's past sexual conduct, had been preserved or abrogated:

1. The section was judicially interpreted as elevating the complainant's credibility from a *collateral* issue to a *material* one, thus removing even the minimal protections afforded by the common law;[14]

2. The section was judicially interpreted as rendering the complainant a compellable witness for the accused at the *in camera* hearing, and hence rendering her liable to be questioned in detail concerning her past sexual conduct with persons other than the accused;[15] and

3. The section applied not only to offences where consent was at issue (namely, rape, attempted rape and indecent assault on a female) but also to the offence of sexual intercourse with a female under 14, for which offence the complainant's consent is *irrelevant* to the accused's culpability. With respect to this offence, the 1976 amendment sanctioned an extensive inquiry into the complainant's past sexual conduct for the purposes of impugning her credibility, an inquiry which the rules of the common law did *not* permit.[16]

Manifestly, the former section 142 of the *Criminal Code* failed to realize its ostensible purpose and, if anything, tended to foster the notion that the complainant in a sexual case was *herself* on trial.

Amendments Introduced in January, 1983

The amendments to the *Criminal Code* introduced in January, 1983 substantially restrict the admission of evidence concerning the complainant's prior sexual conduct with persons other than the accused. Sections 246.6 and 246.7 of the *Criminal Code* now provide:[17]

> 246. (1) In proceedings in respect of an offence under section 246.1, 246.2 or 246.3, no evidence shall be adduced by or on behalf of the accused concerning the sexual activity of the complainant with any person other than the accused unless
>
> (a) it is evidence that rebuts evidence of the complainant's sexual activity or absence thereof that was previously adduced by the prosecution;
>
> (b) it is evidence of specific instances of the complainant's sexual activity tending to establish the identity of the person who had sexual contact with the complainant on the occasion set out in the charge; or
>
> (c) it is evidence of sexual activity that took place on the same occasion as the sexual activity that forms the subject-matter of the charge, where

that evidence relates to the consent that the accused alleges he believed was given by the complainant.

(2) No evidence is admissible under paragraph (1)(c) unless

(a) reasonable notice in writing has been given to the prosecutor by or on behalf of the accused of his intention to adduce the evidence together with particulars of the evidence sought to be adduced; and

(b) a copy of the notice has been filed with the clerk of the court.

(3) No evidence is admissible under subsection (1) unless the judge, magistrate or justice, after holding a hearing in which the jury and the members of the public are excluded and in which the complainant is not a compellable witness, is satisfied that the requirements of this section are met.

(4) The notice given under subsection (2) and the evidence taken, the information given or the representations made at a hearing referred to in subsection (3) shall not be published in any newspaper or broadcast.

246.7 In proceedings in respect of an offence under section 246.1, 246.2 or 246.3, evidence of sexual reputation, whether general or specific, is not admissible for the purpose of challenging or supporting the credibility of the complainant.

These provisions are noteworthy in the following respects:

- Where the accused is charged with one of the "sexual assault" offences in sections 246.1, 246.2, or 246.3, the sexual activity of the complainant with any person other than the accused may only be admitted into evidence if it meets one of the narrow conditions outlined in sections 246.6 (1)(a), 246.6 (1)(b), or 246.6 (1)(c).
- At the *in camera* hearing, both the jury and the members of the public are excluded, and the complainant is *not* a compellable witness.
- Evidence of the complainant's sexual reputation is not admissible for the purposes of challenging or supporting the credibility of the complainant in a proceeding in respect of any of the "sexual assault" offences.

Summary

The Committee considers that the amendments introduced in January, 1983 provide sufficient safeguards against unjustified inquiries into the complainant's past sexual conduct or sexual reputation, where the accused is charged with a form of "sexual assault." In the Committee's view, these amendments strike an appropriate balance between protecting the complainant and preserving the accused's fundamental right of making a full answer and defence to the sexual assault charge against him.

In the opinion of the Committee, however, these reforms fail to provide any additional protection at all to young persons who are victims of a sexual offence other than a form of sexual assault, for example, incest, gross indecency, and sexual intercourse with a female under 14. In trials concerning the latter offences, the common law assumption that an unchaste young person is

more likely to be untruthful will continue to operate. Consequently, insinuations concerning a young complainant's sexual history may still be admissible simply to impeach his or her credibility as a witness. In the Commitee's view, this state of affairs is unacceptable.

The Committee recommends that the *Criminal Code* be amended to provide that:

1. **Sections 246.6 (1)(a) and 246.6 (1)(b), and the corollary provisions in sections 246.6 (3) through 246.6 (6), apply to *all* sexual offences.**

2. **Section 246.7 applies to *all* sexual offences.**

These amendments would ensure that the complainant's past sexual conduct would be inadmissible merely to impeach his or her credibility as a witness, and would finally extinguish the dubious common law assumption that there is a direct correspondence between chastity and veracity.[18] Further, since the Committee recommends elsewhere in this Report that the concepts of "previously chaste character"[19] and "more to blame"[20] be removed from Canadian criminal law, there would be no inconsistency between the recommendations made above and the Committee's recommendations concerning amendments to the substantive criminal law of sexual offences.

References

Chapter 18: Previous Sexual Conduct

[1] *Report of the Federal/Provincial Task Force on Uniform Rules of Evidence* (Ottawa: Department of Justice, 1981) at 83-84.

[2] *Ibid.*, at 84.

[3] This summary has been adapted from the *Report of the Federal/Provincial Task Force on Uniform Rules of Evidence, supra*, note 1 at 83-85.

[4] *R. v. Martin* (1834), 172 E.R. 1364, *R. v. Cockcroft* (1870), 11 Cox C.C. 410; *R. v. Holmes* (1871), L.R. 1 C.C.C.R. 334; *R. v. Riley* (1887), 16 Cox C.C. 191.

[5] *R. v. Clay* (1851), 5 Cox C.C. 146; *R. v. Clarke* (1817), 171 E.R. 633, and *R. v. Tissington* (1843), 1 Cox C.C. 48.

[6] *R. v. Moulton*, [1980] 1 W.W.R. 711 (Alta. C.A.); *R. v. Greatbanks*, [1959] Crim. L.R. 450; *R. v. Krausz* (1973), 57 Cr. App. R. 466 (C.C.A.).

[7] *R. v. Basken and Kohl* (1974), 21 C.C.C. (2d) 321 (Sask. C.A.); *R. v. Moulton, ibid.*

[8] *Ibid.*

[9] *Ibid.* See also *Laliberté v. The Queen* (1877), 1 S.C.R. 117.

[10] *Supra*, note 7.

[11] *Report of the Federal/Provincial Task Force on Uniform Rules of Evidence, supra*, note 1 at 84.

[12] S.C. 1974-75-76, c. 93, s. 8.

[13] S.C. 1980-81-82-83, c. 125, s. 6.

[14] *Forsythe v. The Queen*, [1980] 2 S.C.R. 268.

[15] *Ibid.*

[16] See *R. v. Cargill*, [1913] 2 K.B. 271 (C.C.A.), and generally Cambridge Department of Criminal Science, *Sexual Offences* (London: MacMillan and Co., 1957) at 384-86.

[17] S.C. 1980-81-82-83, c. 125, s. 19.

[18] *Report of the Federal/Provincial Task Force on Uniform Rules of Evidence, supra*, note 1 at 91-92. But see *R. v. Konkin*, (1983), 44 A.R. 10 (S.C.C.).

[19] See ss. 146 (2), 151, 152, and 153 (1)(b) of the *Criminal Code* R.S.C. 1970, c. C-34.

[20] See s. 146 (3) of the *Criminal Code, ibid.*

Chapter 19

Evidence of an Accused's Spouse

Where an accused is charged with a sexual offence against a young person, an important issue arises concerning the legal capacity of the accused's spouse to testify against him or her. For example, until the amendments introduced in January, 1983, the spouse of an accused charged with the offence of indecent assault on a female or indecent assault on a male was neither competent nor compellable to testify against his or her spouse, regardless of the potential cogency of that testimony. This chapter outlines the historical bases of these spousal privileges and disqualifications, and considers the current state of the law.

Spousal Competence and Compellability

It is necessary, before delving into the historical origins of the rules concerning spousal competence and compellability, to define what is meant by the legal terms "competent" and "compellable". A witness is *competent* if he or she may lawfully be called to give evidence.[1] On the other hand, a witness is *compellable* if he or she may lawfully be *obliged* to give evidence, under pain of being held in contempt of court if he or she refuses to do so. The general rule is that all competent witnesses are also compellable[2] and, in Canada, if not in England,[3] where a witness is competent for a party either at common law or by statute, then such witness is also compellable by that party.[4]

At common law the spouse of the accused was not competent as a witness either for the defence or for the Crown, except in cases where the offence involved the transgression by one spouse of the "person, liberty, or health" of the other spouse.[5] The incompetence extended to spouses of either sex and to testimony relating to events that occurred both before and during the marriage.[6]

The historical evolution of the rules concerning marital communications between spouses and spousal incompetency belies a clear, unbroken line of development. Wigmore suggested as a possible source the testimonial rules of the old ecclesiastical law, which excluded the testimony of an alleged transgressor's family, dependants and servants.[7] Other considerations which gave

impetus to the rules were: the common law concept of the unity of the marriage partners (which unity inhered in the husband);[8] the perception that one spouse would be unduly biased in testifying regarding a matter that concerned the other spouse;[9] and the fact that the spouse was at one time considered an "interested party" whose testimony should accordingly be excluded from the court's consideration.[10]

The most conspicuous contribution to the rules concerning spousal incompetence was, however, a pronounced judicial reluctance to disrupt "the peace of the families"[11] or to cause "dissensions in families between husband and wife"[12] by allowing one spouse (usually the wife) to be a witness for or against the the other spouse (usually the husband). As Wigmore stated, "possibly the true explanation is, after all, the simplest one, namely, that a natural and strong repugnance was felt . . . to condemning a man by admitting to the witness stand against him those who lived under his roof, shared the secrets of his domestic life, depended on him for sustenance and were almost numbered among his chattels."[13] Although many inroads to the common law rules have been made by legislative enactments over the years, the residue of these rules reflects the law's traditional reluctance to oblige one spouse to testify against the other in a criminal proceeding.

Before considering the current state of Canadian law in this regard, it should be noted that the special rules concerning spousal competence and compellability discussed below apply only where the persons concerned are legally married.[14] Persons who are not legally married, even though they may have lived together for several years, enjoy no special privilege in this regard.

Evidence of an Offender's Spouse in Criminal Proceedings

In criminal proceedings, the statutory provision bearing on the issues of spousal competence and compellability and of interspousal communications during marriage is section 4 of the *Canada Evidence Act*,[15] which provides:[16]

> 4.(1) Every person charged with an offence, and, except as otherwise provided in this section, the wife or husband, as the case may be, of the person so charged, is a competent witness for the defence, whether the person so charged is charged solely or jointly with any other person.
>
> (2) The wife or husband of a person charged with an offence or attempt to commit an offence against section 33 or 34 of the *Juvenile Delinquents Act* or with an offence against any of sections 146, 148, 150 to 155, 157, 166 to 169, 175, 195, 197, 200, 246.1, 246.2, 246.3, 249 to 250.2, 255 to 258 or 289 of the *Criminal Code*, is a competent and compellable witness for the prosecution without the consent of the person charged.
>
> (3) No husband is compellable to disclose any communication made to him by his wife during their marriage, and no wife is compellable to disclose any communication made to her by her husband during their marriage.

(3.1) The wife or husband of a person charged with an offence against any of sections 203, 204, 218, 219, 220, 222, 223, 245, 245.1, 245.2 or 245.3 of the *Criminal Code* where the complainant or victim is under the age of fourteen years is a competent and compellable witness for the prosecution without the consent of the person charged.

(4) Nothing in this section affects a case where the wife or husband of a person charged with an offence may at common law be called as a witness without the consent of that person.

(5) The failure of the person charged, or of the wife or husband of such person, to testify, shall not be made the subject of comment by the judge, or by counsel for the prosecution.

From the Committee's perspective, the most important of these provisions are sections 4(2) and 4(3.1), which set out those criminal offences on prosecutions for which the accused's spouse is both competent and compellable for the Crown without the consent of the accused. These sections, however, must be understood in light of the other provisions of section 4 discussed below.

Section 4(1) of the *Canada Evidence Act* is a statutory departure from the common law rule that a spouse was not competent either for the defence or for the Crown, except where the offence involved a transgression by the accused of the "person, liberty, or health" of the victim spouse. It provides that, subject to the other provisions in section 4, the spouse of an accused person is a competent witness for the defence. Further, the predominant judicial view in Canada is that, where a witness is competent for a party either at common law or by statute, then such witness is also compellable to testify at the instance of that party.[17]

Section 4(3) codifies the common law privilege of nondisclosure concerning communications by one spouse to another during their marriage and provides:

> No husband is compellable to disclose any communication made to him by his wife during their marriage, and no wife is compellable to disclose any communication made to her by her husband during their marriage.

This privilege of non-disclosure can be claimed only by the spouse who received the communication sought to be introduced in evidence, not by the spouse who made the communication. Further, once the marriage has been dissolved by divorce, the marital privilege concerning communications between spouses may not be claimed.[18]

An important legal issue is whether the privilege conferred by section 4(3) can be claimed where the spouse claiming it is a competent and compellable witness for the Crown pursuant to section 4(2). Canadian courts have differed on this question. The Quebec Court of Appeal has held that the privilege conferred by section 4(3) does not apply to a spouse who is otherwise competent and compellable for the Crown pursuant to section 4(2);[19] the Alberta Court of Appeal has reached the opposite conclusion,[20] and the Court of Appeal for Ontario declined to determine this issue when an opportunity presented itself.[21]

Obviously, the provisions of section 4(2) lose much of their force, particularly in the context of intra-familial child sexual abuse, where an otherwise competent and compellable spouse who has pertinent testimony can nonetheless claim the privilege of non-disclosure concerning, for example, her husband's inculpatory statements to her.

It has been held both in Canada[22] and in England[23] that an inculpatory letter written by one spouse to another will be admissible in evidence if a third party is made aware of the letter's contents, as will evidence of a third party who overhears an interspousal communication.[24] On the other hand, where an interspousal "private communication" is electronically intercepted by the police pursuant to Part IV.1 of the *Criminal Code*,[25] the intercepted communication will be inadmissible where the non-accused spouse does not waive the privilege conferred by section 4(3), and where the offence is not one for which the non-accused spouse is a competent or compellable witness at the instance of the Crown.[26]

Section 4(4) of the *Canada Evidence Act* provides:

> Nothing in this section affects a case where the wife or husband of a person charged with an offence may at common law be called as a witness without the consent of that person.

As noted above, the common law exception to the general rule of spousal incompetence pertained to offences in which one spouse transgressed the "person, liberty, or health" of the other spouse. This exception was established in the early seventeenth century in *Lord Audley's Case*,[27] where a wife was held to be competent to testify against her husband, who was charged as an accessory to her rape. Cross argues that "the decision was based on necessity. Were the law otherwise the injured spouse would frequently have no remedy."[28]

Recent years have witnessed an expansion of the kinds of offences for which the victim spouse will be considered competent to testify against the offending spouse pursuant to section 4(4).[29] This development has broadened to include offences directed, not only against the spouse of the offender, but also against a child of the family. For example, in *R. v. MacPherson*,[30] the accused was charged with assaulting his infant son, and an issue arose concerning the wife's competence to testify against him. The Alberta Court of Appeal held that section 4(4) should be considered to include such a situation, and approved the Ontario County Court decision in *R. v. McNamara*,[31] which adopted a similar conclusion. In *R. v. Fellichle*,[32] a mother was charged with the attempted murder of her infant son; the British Columbia Supreme Court held that the mother's husband was competent to testify against her. From these decisions, it is apparent that Canadian courts are taking a liberal, and altogether justifiable, view concerning the kinds of behaviours by one spouse which should be considered injurious to the "person, liberty, or health" of the other spouse.

Amendments to the Canada Evidence Act Introduced in January, 1983

Sections 4(2) and 4(3.1) of the *Canada Evidence Act* provide:

> 4. (2) The wife or husband of a person charged with an offence or attempt to commit an offence against section 33 or 34 of the *Juvenile Delinquents Act* or with an offence against any of sections 146, 148, 150 to 155, 157, 166 to 169, 175, 195, 197, 200, 246.1, 246.2, 246.3, 249 to 250.2, 255 to 258 or 289 of the *Criminal Code*, is a competent and compellable witness for the prosecution without the consent of the person charged.
>
> 4.(3.1) The wife or husband of a person charged with an offence against any of sections 203, 204, 218, 219, 220, 222, 223, 245, 245.1, 245.2 or 245.3 of the *Criminal Code* where the complainant or victim is under the age of fourteen years is a competent and compellable witness for the prosecution without the consent of the person charged.

As a consequence of these amendments, the wife or husband of a person charged with virtually any sexual offence against a young person is a competent and compellable witness for the Crown, and this applies also to other assaultive offences where the offending spouse's victim is under the age of 14. The amendments to section 4 of the *Canada Evidence Act* introduced in January, 1983 are illustrative of the gradual erosion in Canadian law of the special testimonial privileges and disqualifications conferred by the common law on husbands and wives.

Evidence of Spouses in Child Welfare Proceedings

The rules of evidence relating to spouses in child welfare proceedings are governed by provisions of the various provincial "child welfare" laws, or by provincial evidence acts, or by both.The applicable law in each province and territory is canvassed below.

Newfoundland

In Newfoundland, section 12(3) of *The Child Welfare Act, 1972*, S. Nfld. 1972, No. 37, enables a judge to "compel the attendance of witnesses". Section 2 of *The Evidence Act*, R.S. Nfld. 1970, c. 115 makes spouses "competent and compellable" on the trial of any issue joined, or any matter or question, or on any enquiry arising in any suit action or other proceeding, in any court of justice. Section 4 of that Act retains the interspousal communication privilege of non-disclosure.

Prince Edward Island

The Prince Edward Island *Family and Child Services Act*, S.P.E.I. 1981, c. 12, is silent as to witnesses' competence and compellability. However, section 4 of the *Evidence Act*, R.S.P.E.I. 1974, c. E-10, mandates spousal competence and compellability. Section 9 provides that a spouse receiving an interspousal communication is not compellable to disclose such communication.

Nova Scotia

In Nova Scotia, the *Children's Services Act*, S.N.S. 1976, c. 8, makes no express provision for the competence and compellability of witnesses. Section 42 of the Nova Scotia *Evidence Act*, R.S.N.S. 1967, c. 94, however, provides that spouses are competent and compellable and section 46 retains the inter-spousal communications privilege.

New Brunswick

The New Brunswick *Child and Family Services and Family Relations Act*, S.N.B. 1980, c. C-2.1, section 30(9), provides:

> "Notwithstanding the *Evidence Act*, a spouse may be compelled to testify as a witness in the course of judicial proceedings brought against his spouse under this Act with respect to abuse or neglect of a child or an adult."

This provision seems to give paramountcy to this act over section 10 of the New Brunswick *Evidence Act*, R.S.N.B. 1973, c. E-11, which preserves spousal non-compellability with respect to the marital communications of the spouses. Section 3 of the *Evidence Act* provides generally for spousal competence and compellability.

Quebec

In Quebec, section 85 of the *Youth Protection Act*, S.Q. 1977, c. 20 incorporates by reference article 295 of the *Code of Civil Procedure* R.S.Q. 1980, c. C-25 (among others), which provides that "all persons are competent to testify . . . , and any person competent to testify may be compelled to do so. Relationship, connection by marriage and interest are objections only to the credibility of a witness".

Ontario

In Ontario, s. 8 of the *Evidence Act*, R.S.O. 1980, c. 145 makes parties to an "action" and their spouses "competent and compellable to give evidence on behalf of themselves or of any of the parties."

Section 1 of that Act defines "action" to include "an issue, matter, arbitration, reference, investigation, inquiry . . . and any other proceeding authorized or permitted to be tried, heard, had or taken by or before a court under the law of Ontario." In addition, s. 28(2) of the *Child Welfare Act*, R.S.O. 1980, c. 66, provides that the family court has "the same power to enforce the attendance of witnesses and to compel them to give evidence . . . as is vested in any court in civil cases." The exception is interspousal communications, for which the recipient spouse is not compellable by section 11 of the *Evidence Act*.

Manitoba

In Manitoba, *The Child Welfare Act*, S.M. 1974, c. 30, section 25(8), empowers a judge to "compel the attendance of any person and require him to give evidence under oath". *The Manitoba Evidence Act*, R.S.M. 1970, c. E-150, of that province provides for the competence and compellability of spouses (section 5) and also retains the limit on compellability of a recipient spouse regarding interspousal communications (section 10).

Saskatchewan

The Saskatchewan Evidence Act, R.S.S. 1978, c. S-16, provides for spousal competence and compellability (section 35(1) and retains the interspousal

communication privilege (section 36). *The Family Services Act*, R.S.S. 1978, c. F-7, of that province empowers a judge to "compel the attendance of witnesses in the same manner as a judge may compel the attendance of witnesses in summary conviction proceedings." (Section 25).

Alberta

The *Alberta Evidence Act*, R.S.A. 1980, c. A-21, is similar to that of Ontario in this regard. Section 4(2) of that Act sets out the general rule that spouses are "competent and compellable" and section 8 provides an exception for interspousal communications, for which the spouse receiving the communication is not compellable. The Alberta *Child Welfare Act*, R.S.A. 1980, c. C-8, section 13(1)(a), empowers a judge to "compel the attendance of any person and require him to give evidence on oath . . . ". Similarly, section 12(1) of that Act provides that proceedings "may be as informal as the circumstances will permit". The combined effect of these provisions seems to confer "competence and compellability" on spouses. However, some uncertainty exists whether interspousal communications remain privileged at child welfare proceedings.

British Columbia

In British Columbia, the *Family and Child Service Act*, S.B.C. 1980, c. 11, provides in section 19(1) that a court may "compel the attendance of witnesses and administer oaths" in proceedings under the Act. Section 7 of the *Evidence Act*, R.S.B.C. 1979, c. 116, makes spouses of parties "competent and compellable" and section 8 retains the interspousal communication privilege by providing that the recipient spouse is not compellable to disclose marital communications.

Yukon Territory

The Yukon Territory's *Child Welfare Ordinance* R.O.Y.T. 1971, c. C-4 makes no express provision for the powers of a judge to compel witnesses at child protection hearings. However, section 4(1) of the *Evidence Ordinance*, R.O.Y.T. 1971, c. E-6, confers competence and compellability on spouses in an "action", which includes "any civil proceedings, inquiry, arbitration and . . . any other prosecution or proceeding authorized or permitted to be tried, heard, had or taken . . . under the law of the Territory" [section 2(1)]. Section 7(1) of the *Evidence Ordinance* provides that the recipient spouse is not compellable to disclose interspousal communications.

Northwest Territories

In the Northwest Territories, section 101 of the *Child Welfare Ordinance*, R.O.N.W.T. 1974, c. C-3, confers upon a judge the "same power . . . to enforce the attendance of witnesses and to compel them to give evidence . . . as is vested in the Court in civil cases." Section 4 of the *Evidence Ordinance* R.O.N.W.T. 1974, c. E-4, like its provincial counterparts, makes spouses competent and compellable. Similarly, section 7 of the *Evidence Ordinance* retains the interspousal communication privilege of non-disclosure.

As is apparent from the foregoing summary, there is uncertainty in a number of jurisdictions about whether a spouse who is compellable at a child welfare proceeding may also be compelled to disclose relevant communications made to him or her by the other spouse during their marriage.

Summary

The Committee considers that, in cases of alleged sexual or physical abuse of a young person, the social importance of making available to the court all probative evidence far exceeds that of ostensibly protecting a marital relationship. That the sexual abuse of young persons, by its very nature, is difficult to prove makes it even more crucial that all potentially relevant testimony, whether elicited from the offender's spouse or from an other party, should be accessible to the judicial process. Public policy and children's safety alike require that probative evidence should not be withheld. In the words of a British jurist:[33]

> Respect is due to the confidences of married life: but so is respect due to the ascertainment of the truth. Marital accord is to be preserved: but so is public security.

Accordingly, **the Committee recommends that:**

1. **The *Canada Evidence Act* be amended to provide explicitly that, where a spouse is competent and compellable pursuant either to section 4(2) or 4(3.1) of that Act, the privilege of non-disclosure contained in section 4(3) may *not* be claimed by that spouse.**

2. **Each provincial and territorial evidence act, and the *Quebec Code of Civil Procedure*, be amended to provide explicitly that, where a spouse is otherwise competent and compellable at a child welfare proceeding, such spouse may *not* claim any privilege of non-disclosure relating to interspousal communications.**

References

Chapter 19: Evidence of an Accused's Spouse

[1] Cross, *Evidence* (5th ed. London: Butterworths, 1979) at 163.

[2] *Ibid.*

[3] See *Hoskyn v. Metropolitan Police Commissioner*, [1978] 2 All E.R. 136, 67 Cr. App. Rep. 88 (H.L.).

[4] *R. v. Czipps* (1979), 101 D.L.R. (3d) 323, 48 C.C.C. (2d) 166 (Ont. C.A.); *R. v. Sillars* (1978), 45 C.C.C. (2d) 283, [1979] 1 W.W.R. 743 (B.C.C.A.); *R. v. Lonsdale* (1973), 15 C.C.C. (2d) 201, [1974] 2 W.W.R. 157 (Alta. C.A.). See also *Gosselin v. The King* (1903), 33 S.C.R. 255, 7 C.C.C. 139.

[5] Uniform Law Conference of Canada, *Report of the Federal/Provincial Task Force on Uniform Rules of Evidence*, (Ottawa: Department of Justice, 1981) at 297.

[6] Cross, *supra*, note 1, at 166.

[7] Wigmore, 8 *Evidence in Trials at Common Law*, rev. McNaughton (Boston: Little, Brown & Co., 1961), s. 2227.

[8] *R. v. Neal* (1835), 7 Car. & P. 168, 173 E.R. 74.

[9] *Davis v. Dinwoody* (1792), 4 T.R. 678, 100 E.R. 1241.

[10] Cross, *supra*, note 1, at 165.

[11] *Barker v. Dixie* (1736), Cas. T. Hard. 264 at 264, 95 E.R. 171 at 171 *per* Lord Hardwicke.

[12] *R. v. Cliviger* (1788), 2 T.R. 263 at 269, 100 E.R. 143 at 146 *per* Grose J.

[13] Wigmore, *supra*, note 7, s. 2227.

[14] *Ex parte Coté* (1971), 5 C.C.C. (2d) 49 (Sask. C.A.). See also *R. v. Lonsdale* (1973), 15 C.C.C. (2d) 201 (Alta. C.A.), and *R. v. Mann*, [1971] 5 W.W.R. 84 (B.C.S.C.).

[15] *Canada Evidence Act*, R.S.C. 1970, c. E-10.

[16] This section was amended by S.C. 1980-81-82-83, c. 125, s. 29.

[17] See cases cited *supra*, note 4.

[18] *R. v. Marchand* (1980), 55 C.C.C. (2d) 77 (N.S.C.A.).

[19] *R. v. St.-Jean* (1976), 34 C.R.N.S. 378 (Que. C.A.).

[20] *R. v. Jean and Piesinger* (1979), 46 C.C.C. (2d) 176 (Alta. C.A.), *aff'd* 51 C.C.C. (2d) 192n (S.C.C.).

[21] *Re Mailloux and The Queen* (1980), 55 C.C.C. (2d) 193 (Ont. C.A.).

[22] *R. v. Armstrong* (1970), 1 C.C.C. (2d) 106 (N.S.C.A.).

[23] *Rumping v. D.P.P.*, [1962] 3 All E.R. 256 (H.L.).

[24] See *R. v. Bartlett* (1837), 173 E.R. 362; *R. v. Smithies* (1832), 172 E.R. 999; *R. v. Simons* (1834), 172 E.R. 1355; *R. v. Jean and Piesinger*, *supra*, note 20; and *Rumping v. D.P.P.*, *supra*, note 23. But see *R. v. Dreher* (1952), 103 C.C.C. 321 (Alta. C.A.).

[25] *Cr. Code*, ss. 178.1 — 178.23.

[26] *R. v. Jean and Piesinger*, *supra* note 20.

[27] (1631), 3 State Tr. 401, followed in *R. v. Azire* (1725), 1 Stra. 633.

[28] *Supra*, note 1, at 167.

[29] See, *e.g.*, *R. v. Sillars*, [1979] 1 W.W.R. 743, 45 C.C.C. (2d) 283 (B.C.C.A.) (charge of arson); *R. v. Bowles*, [1967] 3 C.C.C. 60, 50 C.R. 353 (Alta. Prov. Ct.) (charge of forcible entry into a

dwelling-house); *R. v. Beam* (1974), 19 C.C.C. (2d) 41 (Ont. Prov. Ct.) (charge of assault causing bodily harm); *Maida v. The Queen* (1979), 12 C.R. (3d) 227 (Ont. Co. Ct.) (charge of dangerous driving); *R. v. Czipps* (1979), 101 D.L.R. (3d) 323, 48 C.C.C. (2d) 166 (Ont. C.A.) (charge of possession of a weapon for a purpose dangerous to the public peace).

[30] (1980), 36 N.S.R. (2d) 674 (C.A.).

[31] (1979), 48 C.C.C. (2d) 201 (Ont. Co. Ct.).

[32] (1979), 12 C.R. (3d) 207 (B.C.S.C.).

[33] *Rumping v. D.P.P.*, *supra*, note 23 at 276 *per* Lord Morris of Borth-Y-Gest.

Chapter 20

Similar Acts

The doctrine of similar fact evidence is an exception to the general rule that the Crown may not lead evidence of the accused's criminal disposition[1] unless the accused has in some way put his or her character in issue. Where, for example, the accused is charged with sexual assault on a pre-pubescent girl, the Crown may lead evidence of prior sexual assaults by the accused on other young girls, even though the prior incidents were not the subject of criminal charges against the accused and the accused has not previously put his character in issue, provided that the so-called "similar fact evidence" is considered by the trial judge to be highly probative on an issue before the court. Many of the leading Canadian and English legal decisions on similar fact evidence have involved the sexual molestation either of one child or of a number of children in a roughly similar fashion over a period of time.

As exemplified in the following case study from the National Police Force Survey, this behavioural tendency of some sexual offenders against children was documented in the research findings of the Committee.

> The adult male accused was charged with a total of 10 counts, for offences including buggery, indecent assault on a male and assault with intent to commit buggery. He committed the acts for which he was charged on five separate occasions with five boys aged 13 and 14 years. The male victims were runaways, and the accused's consistent "recruitment" pattern was to befriend the runaway, invite him to the accused's apartment to spend the night, and thereupon commit the assault. He apparently chose runaways as his victims because they were unlikely to make complaints, for fear of involving the police and being sent home or to a child welfare agency. The accused's activities came to light when two of his victims spoke to a social worker, which subsequently prompted a police investigation.

The common denominator in cases where similar fact evidence is sought to be introduced by the Crown is that such evidence will, if admitted, invariably taint the accused with an odour born of activities other than the one for which he or she stands trial. Canadian courts have, accordingly, professed to admit such evidence only where its relevance to an issue before the court materially outweighs its prejudicial nature, and where there is a demonstrated link between the allegedly similar facts and the accused.[2]

Whether similar fact evidence can afford corroboration is an important issue in the context of sexual offences against young persons, in spite of the repeal effected in January, 1983 of the statutory corroboration requirement for assaultive sexual offences. In all sexual offences, where the Crown adduces the evidence of a child who is unsworn, no conviction may be registered against the accused unless such evidence "is corroborated in a material particular by evidence that implicates the accused".[3] Accordingly, whether a particular form of evidence is capable of corroborating a child's unsworn testimony will continue to be crucial in cases of child sexual abuse, in the absence of wholesale changes to the evidentiary rules concerning children's testimony.

The doctrine of similar fact evidence tends to afford protection for sexually abused young persons. It allows the previous sexual behaviour of the accused with the same child or with others to be used to show that the accused may be guilty of the sexual offence charged, while safeguarding the accused against far-fetched inculpatory inferences based on his or her prior behaviour.

The Committee therefore recommends that this evidentiary doctrine be retained. Further, the Committee considers that the "similar acts" exception to the character evidence rule should not be codified, and in this respect, agrees with the Federal/Provincial Task Force on Uniform Rules of Evidence[4] and with the legislative proposals of Bill S-33.[5]

The Committee also makes the following observations concerning this form of evidence:

1. The potential probative value of similar fact evidence reinforces the necessity of allowing children of younger ages to testify in court. The admissibility of similar fact evidence depends, where the similar facts are proffered by young children, largely on whether those children are deemed legally competent to testify to those facts at trial.

2. Evidence of past incidents of child abuse by parents (evidence of "past parenting"[6]) has an important role to play in child welfare proceedings, in determining whether a child is in need of protection from a particular person or persons and, if so, the most appropriate legal disposition vis-a-vis the child. The Committee considers that the court should have before it all relevant evidence in making these determinations.

With respect to provincial child welfare legislation, the Committee recommends that a provision similar to section 28(4) of the Ontario *Child Welfare Act*[7] be enacted in each province and territory. Section 28(4) of that Act provides:

> **Notwithstanding any privilege or protection afforded under the *Evidence Act*, before making a decision that has the effect of placing a child in or returning a child to the care or custody of any person other than a society, the court may consider the past conduct of that person towards any child who is or has at any time been in the person's care, and any statement or report whether oral or written, including any transcript, exhibit or finding in a prior proceeding whether civil or criminal that the court considers relevant to such consideration and upon such proof as the court may require, is admissible in evidence.[8]**

References

Chapter 20: Similar Acts

[1] Cross, *Evidence* (5th ed. London: Butterworths, 1979) at 354.

[2] *Sweitzer v. The Queen* (1982), 68 C.C.C. (2d) 193 (S.C.C.); *Guay v. The Queen* (1979), 42 C.C.C. (2d) 536 (S.C.C.).

[3] *Criminal Code*, R.S.C. 1970, c. C-34, *as am.*, s. 586. See also *Canada Evidence Act*, R.S.C. 1970, c. E-10, *as am.*, s. 16(2); and *Juvenile Delinquents Act*, R.S.C. 1970, c. J-3, *as am.*, s. 19(2).

[4] *Report of the Federal/Provincial Task Force on Uniform Rules of Evidence*, (Ottawa: Department of Justice, 1981) at 100.

[5] *Canada Evidence Act*, Bill S-33, 1982 (32nd Parl. 1st Sess.), 26(b). See generally ss. 23-31 of the proposed Bill.

[6] See generally Bala, Lilles, and Thompson, *Canadian Children's Law* (Toronto: Butterworths, 1982) at 181-84.

[7] *Child Welfare Act*, R.S.O. 1980, c. 66.

[8] Judicial experience with this provision in Ontario indicates that family court judges are mindful of the prudential limits of this form of evidence: see *C.A.S. of Metro Toronto v. N.H.B.*, (unreported) May 8, 1980, (Ont. Prov. Ct.); *Kawartha Haliburton C.A.S. and Haylock* (1980), 3 F.L.R.R. 27 (Ont. Prov. Ct.); *C.A.S. of Metro Toronto v. C. and C.* (1981), 21 R.F.L. (2d) 426 (Ont. Prov. Ct.); and *Elizabeth and James C. v. Catholic Children's Aid Society of Metropolitan Toronto* (1982), 37 O.R. (2d) 82 (Ont. Co. Ct.). For an example of the application of similar fact evidence in the context of the manslaughter of a child by a parent, see *R. v. Scheil and Pacquette* (1977), 33 C.C.C. (2d) 422 (Ont. C.A.).

Chapter 21

Public Access to Hearings

This chapter reviews federal and provincial provisions concerning who may attend a legal proceeding in which a sexual assault on a young person is alleged and what effects these provisions may have in relation to obtaining a full and candid presentation of the child's or youth's testimony. The issue of protecting the privacy of young victims of sexual offences is considered separately in Chapter 22, *Publication of Victims' Names*.

Provincial and Territorial Child Welfare Legislation

Canadian child welfare legislation reflects the four major options which may be followed in relation to the closed or open nature of child welfare/child protection proceedings: closed (or *in camera*); open to any member of the public; open to some members of the public but not to others; or left to the discretion of the presiding judge, on a case-by-case basis. The following is a summary of how each province and territory deals with this issue.

Newfoundland

The judge must investigate the case of every child and dispose thereof in premises other than an open courtroom. In the case of a person charged with an offence against the child, the judge may in his or her discretion proceed *in camera*.[1]

Prince Edward Island

The judge has discretion to allow persons other than the immediate parties to the proceeding to attend, and he or she may exclude the child from any part of the hearing.[2]

Nova Scotia

The judge has discretion to permit attendance at the hearing of persons other than the immediate parties to the proceeding.[3]

New Brunswick

The judge has discretion to hold proceedings either in open court or *in camera*, and this discretion should be exercised in light of:

- the public interest in hearing the proceedings in open court;

- any potential harm or embarrassment that may be caused to any person if matters of a private nature are disclosed in open court; and
- any representations made by the parties.[4]

Quebec

It is provided that Youth Court hearings should be held *in camera*, subject to the presence of a member or authorized agent of the Committee for the Protection of Youth. It is also provided, however, that any journalist must be admitted unless the Court considers that his or her presence would cause prejudice to the child.[5]

Ontario

There is a presumption that hearings shall be closed, subject to the judge's discretion to hold otherwise having regard to the wishes of and interests of the parties and to whether the emotional health of any child who is present at the hearing would be injured by the presence of others at the hearing. Two media representatives may be present, subject to their being excluded if the judge determines that their presence would be injurious to the emotional health of any child before the court.[6]

Manitoba

The public is excluded from child protection hearings, and the presence of the child at such hearing is not required unless the judge so orders.[7]

Saskatchewan

The judge has a discretion to admit persons other than the immediate parties to the proceeding.[8]

Alberta

It is provided that the judge shall exclude from the room where the hearing is held all persons other than counsel, any law officer, any child welfare worker involved in the matter, the Director or his representative and the parent or guardian of the child or the immediate relatives of the child concerning whom the hearing is being held, and such other persons as the judge in his or her discretion permits. Further, if the judge considers it desirable, he or she may exclude from the room where a hearing is being held the child concerned, the parent or guardian, and the immediate relatives of the child.[9]

British Columbia

It is provided that proceedings before a court that deals with family or children's matters shall be open to the public, subject to the judge's discretion to exclude any person from the courtroom, *other than* a child before the court, a party to the proceedings or their counsel, where he or she is satisfied that the person's presence:

- may materially prejudice the best interests of a child;
- will substantially prejudice the interests of any adult party to the proceedings; or
- will interfere with the administration of justice.[10]

Yukon Territory

The judge has discretion to permit attendance of persons other than immediate parties to the proceeding, and he or she may exclude the child in

respect of whom a hearing is being held, except where the child's presence is necessary.[11]

Northwest Territories

The judge has discretion to permit attendance of persons other than immediate parties to the proceeding, and he or she *shall* exclude the child in respect of whom a hearing is being held, except where the child's presence is necessary.[12]

Juvenile Delinquents Act and Young Offenders Act

The question of public access to hearings pursuant to the *Juvenile Delinquents Act*[13] was in a somewhat unsettled state in light of recent judicial and constitutional developments. Sections 12(1) and 12(2) of the *Juvenile Delinquents Act* specified that the trials of children shall take place without publicity and separately and apart from the trials of other accused persons, and preferably in a private office or room. In *C.B. and The Queen*,[14] the Supreme Court of Canada held that the phrase "without publicity" in section 12(1) should be taken to mean *in camera* and that, apart from the exceptions listed in sections 10(1), 28(2), and 31(b) of that Act, the trial judge had no discretion to admit members of the public to the trial of a juvenile. This decision was rendered, however, before the coming into force of the *Constitution Act 1982* and the attendant *Charter of Rights and Freedoms*. The *Charter* guarantees, among other provisions, the following fundamental freedoms: freedom of thought, belief, opinion, and expression, including freedom of the press and other media of communication.[15] In the case of *Re Southam Inc. and The Queen (No. 1)*,[16] the Ontario Court of Appeal held (for reasons considered later) that:

1. Although "free access to the courts" is not specifically enumerated under the heading of "fundamental freedoms" in the *Charter*, such access is an integral and implicit part of the guarantee given to everyone of freedom of opinion and expression, which includes freedom of the press.
2. The respondent's right to attend the juvenile hearing had accordingly been infringed.
3. The virtual blanket exclusion of the public under section 12(1) was not a reasonable limit which could be demonstrably justified in a free and democratic society.
4. Section 12(1) of the *Juvenile Delinquents Act*, being inconsistent with the provisions of the Constitution, was of no force or effect.

Accordingly, proceedings under the *Juvenile Delinquents Act* remained open to the public.

The *Juvenile Delinquents Act* was replaced effective April, 1984 by the *Young Offenders Act*,[17] which takes a much different approach to this issue. Under the *Young Offenders Act*, hearings are open to the public, with the court retaining the power under certain circumstances to exclude any or all members

of the public from the proceedings, with specified exceptions.[18] It is much more likely that these provisions will withstand constitutional challenge, since they appear to strike a more appropriate balance between the right of access by the public to the work of the courts and society's interest in the protection and reformation of young offenders.

Proceedings under the Criminal Code

A number of provisions in the *Criminal Code* are relevant to the issue of public access to criminal proceedings. Section 465 (1)(j) provides that, on a preliminary inquiry, a justice may "order that no person other than the prosecutor, the accused and their counsel shall have access to or remain in the room in which the inquiry is held, where it appears to him that the ends of justice will be best served by so doing."[19] Further, in preliminary hearings or trials in respect of a "sexual assault" offence under section 246.1, section 246.2 or section 246.3, no evidence is admissible concerning the sexual activity of the complainant with any person other than the accused unless the presiding judicial officer, after holding a hearing *in which the jury and the public are excluded*, is satisfied that the conditions set out in section 246.6 are met.[20]

Section 441 of the *Criminal Code* pertains to trials of young persons under the age of 16 who have been transferred to adult criminal court pursuant to section 9 of the *Juvenile Delinquents Act*. It provides that trials of such young persons shall take place "without publicity" (namely, *in camera*), regardless of whether the young person is charged alone or jointly with another person. In light of the decision of the Ontario Court of Appeal in *Re Southam Inc. and The Queen (No. 1)*,[21] however, section 441 of the *Criminal Code* would seem to be of doubtful constitutional validity. In any event, section 441 of the *Criminal Code* was repealed by the *Young Offenders Act*.

The most important provisions governing the question of openness of criminal trials are found in sections 442(1) and 442(2) of the *Criminal Code*, which provide:

> 442.(1) Any proceedings against an accused that is a corporation or who is or appears to be sixteen years of age or more shall be held in open court, but where the presiding judge, magistrate or justice, as the case may be, is of the opinion that it is in the interest of public morals, the maintenance of order or the proper administration of justice to exclude all or any members of the public from the court room for all or part of the proceedings, he may so order.
>
> (2) Where an accused is charged with an offence mentioned in section 246.4 and the prosecutor or the accused makes an application for an order under subsection (1), the presiding judge, magistrate or justice, as the case may be, shall, if no such order is made, state, by reference to the circumstances of the case, the reason for not making an order.

In reference to section 442(2), the offences mentioned in section 246.4 of the *Criminal Code* are: incest (section 150); gross indecency (section 157); sexual assault (section 246.1); sexual assault with a weapon, threats to a third

party, or causing bodily harm (section 246.2); and aggravated sexual assault (section 246.3).

The opening clause of section 442(l) reflects the general principle at common law that judicial proceedings shall be held in open court. As was stated by Mr. Justice Clement in *R. v. Warawuk*[22]:

> A principle of administration of justice that is fundamental to common law Courts and has been so over the centuries [is] that trials, whether civil or criminal in their purpose, shall be held in open court.

Apart from the exceptional circumstances governed by section 246.6 and discussed above, members of the public cannot be banned from a criminal trial unless the presiding judge determines that the nature of the charge or of the evidence likely to be presented is such as to warrant excluding the public under one of the three headings set out in section 442(1), namely, the interest of public morals, the maintenance of order or the proper administration of justice. If a criminal trial has been improperly held *in camera*, the judgment may be set aside and a new trial ordered.[23]

The strength of the presumption in favour of open courts in criminal proceedings, which has now been given constitutional force in the *Charter of Rights and Freedoms*,[24] is apparent from the legal decisions that have interpreted the scope of the exceptions relating to "the interest of public morals" and "the proper administration of justice."

> The reluctance of Crown witnesses to testify due to embarrassment over having to appear in open court and testify on a charge of keeping a common bawdy-house is not a sufficient reason to conduct a trial, or any part thereof, *in camera*.[25]

> On charges of unlawful sexual intercourse, indecent assault and gross indecency where the complainants were four teenage girls, the Ontario Court of Appeal held that the embarrassment which would thereby be occasioned to the teenage complainants is not a sufficient ground to hold the trial *in camera*.[26]

> In *R. v. Warawuk*,[27] the accused was charged with two counts of unlawful sexual intercourse with teenage girls. Because he was related by blood to the victims (his cousins), and because it was likely that school children would attend the proceedings, the Crown applied to have the trial conducted *in camera*. The court granted the application, and the accused was convicted. On appeal, it was held that the trial judge did not have sufficient grounds to hold the entire trial *in camera*. A new trial was ordered on the ground that a trial held in contravention of the law cannot sustain the adjudication of the issue. The Alberta Court of Appeal held that a genetic relationship between the parties is not in itself a sufficient ground for holding the trial *in camera*, nor is the fact that the charges are for sexual offences. Although the presence of children at such a trial might well justify an order excluding such children from the courtroom, it would not warrant the exclusion of the public generally. On general principles, exclusion of the public in the interest of public morals relates not to the type of offence charged but to the evidence proposed to be tendered, namely, evidence of acts or circumstances which might reasonably be expected to offend, or to have an adverse or corrupting effect on,

public morals by the publicity of obscenities, perversions, or the like. Alternatively, a witness might need the reassurance of exclusion of the public in testifying to certain matters, which would justify the order of exclusion on the grounds of the proper administration of justice. The discretion to exclude the public must be exercised cautiously and only as circumstances demand.

In *R. v. Brint*,[28] the accused was tried on a charge of indecent assault on a female. Notice had been served under the former section 142(1) of the *Criminal Code* that the complainant would be asked questions concerning her prior sexual conduct with persons other than the accused. The proceedings were held *in camera* while the complainant was testifying, but the trial judge also allowed the court to remain closed for the balance of the trial. Because the complainant was 15 years-old, the Alberta Court of Appeal held that her evidence was properly given *in camera*; it also held, however, that there had been insufficient grounds to justify excluding the public for the remainder of the trial in the interest of public morality. The accused's conviction was quashed and a new trial ordered.

In *Re Cullen and The Queen*,[29] the accused was charged with contributing to juvenile delinquency on the basis that he performed an act of fellatio on a 15 year-old male. The accused was a 39 year-old male. At trial, the Crown applied successfully for an order that the public be excluded from the courtroom during the complainant's testimony, and that everyone under the age of 18 be excluded from the courtroom for the whole trial. The accused applied for an order of *mandamus* with *certiorari* in aid, arguing that the trial judge's exclusion order was improper in the circumstances. The Alberta Court of Queen's Bench dismissed the accused's application. Mr. Justice Cousey considered that the proper administration of justice required that the public be excluded during the period of the trial when the complainant gave his testimony:[30]

> "I can see no need to exclude the public from the preliminary and trial in the interest of public morals but the public should be excluded in the interest of the proper administration of justice. There is sufficient evidence and information in the transcript to suggest to me that if the complainant is required to give his evidence before the public he would not be able to do so and it is in the interest of the administration of justice that all admissible evidence be before the Court and the public should therefore be excluded from the courtroom while the complainant is giving his evidence."

The *F.P. Publications* case[31] points up the relationship between who may be excluded from the trial and what may be published about the trial. The accused was charged with keeping a common bawdy-house, and the Crown presented as witnesses certain patrons who testified about the various services offered at the accused's establishment. The Crown requested and obtained an order excluding *Winnipeg Free Press* reporters from the courtroom, as the newspaper had refused to comply with a request not to publish the names of the witnesses. The Manitoba Court of Appeal ruled that the trial judge had no authority to make such an order. Chief Justice Freedman stated:

> "[I]t was a misuse of s. 442(1) to prevent conduct that was not wrongful and that was an expression of freedom of the press on the theory that its prevention was required for the proper administration of justice. Stronger grounds than there emerge are required to warrant a departure from the principle of trial in open court. In misusing the section the learned trial judge acted in excess of jurisdiction and his order so made cannot stand."

Summary

The Committee acknowledges the vital importance of keeping criminal trials open to public scrutiny. The several considerations which support this long-standing principle of the administration of justice have been well expressed by a Canadian jurist:[32]

> An open trial provides some safeguard against unjust or unfair proceedings against an accused; it militates against the use by the executive of the courts to achieve its own ends; it reduces the possibility of any abuse of judicial power; it maximizes the chances of equal and impartial administration of justice to all accused persons; many aspects of the enforcement of criminal law, such as general abhorrence of certain acts or general deterrence, demand that the public be informed; witnesses who have to give their testimony in public will be more reluctant to give false evidence for fear of exposure. In general, of course, this merely means that it is in the interest not only of the accused and the prosecutor that a criminal trial be in public, but that it is in the interest of the public itself.

In the Committee's view, the limited exceptions to this principle sanctioned by section 442(1) of the *Criminal Code* and by section 39 of the *Young Offenders Act* are both appropriate on policy grounds and sufficiently narrow to be defensible on constitutional grounds. However, the Committee concludes that, for sake of greater clarity these provisions should be amended in order to facilitate obtaining the full and spontaneous account of the child's evidence. Where, for example, the presence of a public "gallery" in the courtroom would prevent a child or other young witness from giving as clear, full and spontaneous an account of his or her evidence as would be possible if his or her evidence was heard *in camera*, there should be express statutory authority for excluding the public.

The question of public access to child welfare proceedings is grounded in somewhat different considerations. As noted earlier, Canadian provinces and territories have taken widely varying positions on this question, in accordance with their differing views about the most workable model for resolving child welfare controversies and the most appropriate set-off between public scrutiny and institutional effectiveness. Particularly in light of the Committee's research findings that most children are not considered to be harmed by participating in criminal or child welfare proceedings, whether open or closed, the Committee considers it inadvisable to recommend a single, uniform approach to this issue in the context of child welfare proceedings. Even so, and for the reasons outlined above:

The Committee recommends that the *Criminal Code*, the *Young Offenders Act* and each child welfare act or equivalent contain a provision authorizing a judge to proceed *in camera* where such a course is required in order to obtain a full and candid presentation of a child's testimony. The proper administration of justice requires that the "best evidence" of all parties be accessible to the judicial process.

In the Committee's view, an emphatic change of attitude towards young sexual victims and young witnesses generally would do much to reduce the anxiety of the courtroom experience for children, for example:

1. The inculcation of a strong presumption on the part of parents, teachers, doctors, police officers, social workers, Crown attorneys and others that a child's allegation of sexual abuse is true, and that it warrants immediate investigation and follow-up.

2. The employment of police officers and social workers specially trained in the management of cases of child sexual abuse and in child interviewing techniques, and the continued support from such persons throughout the investigative and judicial stages.

3. The training of Crown attorneys in the special social and legal issues of child sexual abuse, and the use of such attorneys in all contemplated child sexual abuse prosecutions.

4. The thorough preparation of child witnesses for the courtroom experience, in a manner appropriate to the child's intellectual and emotional development.

5. Where possible, and consistent with the accused's procedural and constitutional rights, the provision of special court facilities enabling a young child's testimony to be elicited in a more informal legal atmosphere.

These steps, as well as others advocated elsewhere in this Report, would materially improve the opportunities for children to speak effectively in their own behalf.

References

Chapter 21: Public Access to Hearings

[1] *The Child Welfare Act, 1972*, S.N. 1972, No. 37, s. 17.

[2] *Family and Child Services Act*, S.P.E.I. 1981, c. 12, ss. 31 and 29(2).

[3] *Children's Services Act*, S.N.S. 1976, s. 59(1).

[4] *Child and Family Services and Family Relations Act*, S.N.B. 1980, c.C-2.1, s. 10.

[5] *Youth Protection Act*, S.Q. 1977, c. 20, s. 82. See also *Code of Civil Procedure*, R.S.Q. 1977, c.C-25, s. 13.

[6] *Child Welfare Act*, R.S.O. 1980, c. 66, s. 57. See also *Judicature Act*, R.S.O. 1980, c. 223, s. 82; and *Unified Family Court Act*, R.S.O. 1980, c. 515, s. 10.

[7] *The Child Welfare Act*, S.M. 1974, c. 30, ss. 25(5) and 25(6).

[8] *The Family Services Act*, R.S.S. 1978, c. F-7, s. 35.

[9] *Child Welfare Act*, R.S.A. 1980, c.C-8, ss. 12(3) and 12(4).

[10] *Provincial Court Act*, R.S.B.C. 1979, c. 341, s. 3.

[11] *Child Welfare Ordinance*, R.O.Y.T. 1971, c.C-4, s. 94.

[12] *Child Welfare Ordinance*, R.O.N.W.T. 1974, c.C-3, s. 105.

[13] *Juvenile Delinquents Act*, R.S.C. 1970, c. J-3.

[14] (1981), 23 C.R. (3d) 289 (S.C.C.).

[15] *Canadian Charter of Rights and Freedoms*, s. 2(b). See also s. 11(d) of the *Charter*.

[16] (1983), 3 C.C.C. (3d) 515 (Ont. C.A.). But see *Re Edmonton Journal and A.G. for Alberta et al* (1983), 4 C.C.C. (3d) 59 (Alta. Q.B.).

[17] *Young Offenders Act*, S.C. 1980-81-82-83, c. 110.

[18] *Ibid.*, s. 39.

[19] See generally *Re Armstrong and State of Wisconsin (1972), 7 C.C.C. (2d) 331 (Ont. H.C.J.); Re Regina and Grant* (1973), 13 C.C.C. (2d) 495 (Ont. H. C.J.); *Re Learn and the Queen* (1981), 63 C.C.C. (2d) 191 (Ont. H.C.J.); and
Re O'Callaghan and The Queen (1982), 65 C.C.C. (2d) 459 (Ont. H.C.J.).

[20] Emphasis added.

[21] *Supra*, note 16.

[22] (1978), 42 C.C.C. (2d) 121, at 123 (Alta. C.A.).

[23] *R. v. Warawuk, ibid.*

[24] *Canadian Charter of Rights and Freedoms*, s. 11(d). See also s. 2(b) of the *Charter*, and the decision of the Ontario Court of Appeal in *Re Southam Inc. and The Queen* (No. 1) (1983), 3 C.C.C. (3d) 515.

[25] *Re F.P. Publications (Western) Ltd.* (1979), 51 C.C.C. (2d) 110 (Man. C.A.).

[26] *R. v. Quesnel and Quesnel* (1979), 51 C.C.C. (2d) 270 (Ont. C.A.).

[27] *Supra*, note 22.

[28] (1978), 45 C.C.C. (2d) 560 (Alta. C.A.).

[29] (1981), 62 C.C.C. (2d) 523 (Alta. Q.B.).

[30] *Ibid.*, at 525.

[31] *Supra*, note 25.

[32] Mewett, *Public Criminal Trials* (1978-79), 21 Cr.L.Q. 199, at 199. See also Wright, *The Open Court: The Hallmark of Judicial Proceedings* (1947), 25 Can. Bar Rev. 721; and Beckton, *Freedom of Expression- Access to the Courts* (1983), 61 Can. Bar Rev. 101.

Chapter 22

Publication of Victims' Names

Chapter 21, *Public Access to Hearings*, dealt with the question: Who may attend legal hearings pertaining to sexual offences against young persons? This chapter addresses a related question, namely: What legal restrictions are placed on the publication of the names of parties to the proceeding (particularly victims) or of evidence presented at such hearings? The connection between these two issues is illustrated by the judicial accommodation to the press known as "the device":[1]

> The media are on occasion dealt with by the courts as representatives of the public. It is a common judicial procedure, when excluding the public from the courtroom, to allow the media to remain with the understanding that they will not publish the proceeding, or else not identify certain information. This accommodation by the courts does not arise from an enforceable right of the press to attend, but from a genuine respect by the courts for the necessity and effectiveness of public review of the court processes. The public have a greater confidence in the administration of justice if the proceedings can be viewed, even if there is some restriction on publication.

This chapter reviews the various statutory provisions bearing on this issue in different proceedings and presents the Committee's research findings concerning the practices of a number of Canadian newspapers, major legal reporting services and Canadian courts in reporting information identifying the young victims of sexual offences.

Most Canadian provinces contain explicit provisions in their child welfare/child protection legislation prohibiting the publication of the identity of any child at the proceedings and of anything that would tend to disclose the identity of any child at the proceedings.[2] The Committee's review of the practices of Canadian newspapers and legal reporting services indicates that these provisions in child welfare laws are respected.

Sections 12(3) and 12(4) of the recently repealed *Juvenile Delinquents Act* provided that:

> 12(3) No report of a delinquency committed, or said to have been committed, by a child, or of the trial or other disposition of a charge against a child, or of a charge against an adult brought in the juvenile court under section 33 or under section 35, in which the name of the child or of the child's

parent or guardian or of any school or institution that the child is alleged to have been an inmate is disclosed, or in which the identity of the child is otherwise indicated, shall without the special leave of the court, be published in any newspaper or other publication.

(4) Subsection (3) applies to all newspapers and other publications published anywhere in Canada, whether or not this Act is otherwise in force in the place of publication. [*Note*: The federal *Juvenile Delinquents Act* did not apply in Newfoundland. See the Newfoundland *Welfare of Children Act*, R.S.N. 1970, c. 190, *as am.*, ss. 12 and 13.]

Several points should be noted about these provisions which were repealed in April, 1984. First, section 12(3) is directed at the child's identity; there is no restriction on publishing the name of an accused adult. Second, the prohibition is technically not absolute; where special leave of the juvenile court is obtained, such information may be published. In determining whether to grant special leave, the court should consider the welfare of the child, the community's best interest and the proper administration of justice.[3] Third, where the child is in no way identified, juvenile court proceedings may be reported without leave of the court.[4] Fourth, although the prohibition in section 12(3) extends to "any newspaper or other publication," section 12(3) can also be contravened where identifying information appears in the electronic media.[5] Finally, it has been held that the provisions in the *Juvenile Delinquents Act* that had prohibited the identification of children in delinquency proceedings did not offend the *Canadian Bill of Rights*.[6]

The *Young Offenders Act*, which came into force in April, 1984, also contains provisions prohibiting the identification of young offenders in the media. Section 38 of the *Young Offenders Act* provides:

38(1) No person shall publish by any means any report

(a) of an offence committed or alleged to have been committed by a young person, unless an order has been made under section 16 with respect thereto, or

(b) of a hearing, adjudication, disposition or appeal concerning a young person who committed or is alleged to have committed an offence in which the name of the young person, a child or a young person aggrieved by the offence or a child or a young person who appeared as a witness in connection with the offence, or in which any information serving to identify such young person or child, is disclosed.

Anyone who contravenes this provision is guilty either of an indictable offence and liable to imprisonment for not more than two years, or of an offence punishable on summary conviction.[7]

Before considering the various sections of the *Criminal Code* that govern issues of publication, it should be noted that these provisions supplement the powers of courts (which vary depending on the "superior" or "inferior" status of the court) to sanction interferences by the news media with the proper administration of justice by way of the contempt of court power. Contempt of court may be committed either inside or outside the courtroom, but the most

common examples involving the media are instances of "constructive contempt," where court proceedings are published in a manner which is considered to interfere with the administration of justice. The *sub judice* rule is the guiding consideration here: when a legal matter has come under the jurisdiction of a court (*sub judice*), the court's proper adjudication of the matter should not be interfered with.[8] The common law powers of courts to punish for contempt of court in criminal proceedings, preserved by section 8 of the *Criminal Code*, are wider (although incapable of precise definition) than the specific statutory provisions in the *Code* relating to non-publication in stated circumstances.

Since this review is concerned mainly with restrictions on publishing the identities of sexual victims, other provisions in the *Criminal Code* relating to publication are only mentioned briefly.

- Where the Crown intends to "show cause" why detention of the accused or a conditional release of the accused is necessary, the accused can apply for a ban on publication of the evidence and information presented at the hearing, and the court must order it. The effect of the order is to ban publication from the time the order is made until the accused is either discharged, or his trial ended.[9]
- In reference to preliminary inquiries, where an accused so requests, the presiding judge shall order that there shall be no publication of any of the evidence until the accused is either discharged, or his trial ended.[10] Since section 467 bans only the *evidence* taken at the inquiry, "[it] would not be unlawful, where an order has been issued under s. 467, to publish the identity of *witnesses* appearing at the preliminary inquiry", although "[such] reporting would always be subject not only to the laws of contempt, but also to the laws of defamation."[11] Similarly, section 470 prohibits the publication of a report of any admission or confession tendered in evidence at a preliminary inquiry until the accused is either discharged, or his trial ended.
- Section 162 of the *Criminal Code* prohibits the publication, in relation to judicial proceedings and with specified exceptions, of "any indecent matter or indecent medical, surgical or physiological details, being matter or details that, if published, are calculated to injure public morals."

Publishing the Identity of the Accused

The *Criminal Code* contains no express statutory authority for prohibiting the publication or broadcast of an accused's identity in a criminal proceeding. Although it has been held that a superior Court has the power to order that the name of an accused not be published,[12] two recent decisions illustrate the manifest judicial reluctance to invoke this power. In a Newfoundland case,[13] it was held that a magistrate could not ban the publication of the identity of the accused even on the compassionate grounds of avoiding a perilous shock to the accused's sick father. The court stated that the magistrate's power to exclude the public from the courtroom under section 442 did not extend to prohibiting

the publication of the identity of the accused or of other evidence from which he could be identified.[14]

The case of *R. v. P.*[15] well illustrates the principle that only in the most extraordinary circumstances will the court order a ban on publishing the name of an accused. In Toronto in 1978, a man was arrested for soliciting for the purpose of prostitution. Although he had intended to enter a guilty plea, the presiding judge invited him to plead not guilty as the judge considered that a male customer could not be convicted of soliciting under section 195.1 of the *Code*. The accused then entered a not guilty plea and the charge against him was dismissed. The Crown appealed the decision and indicated that this case would be an appropriate one for testing whether a male who was not a prostitute could be convicted under section 195.1. Because the accused had not originally wanted to engage in the process in the first place and because the Crown was using his predicament as a "test case", the court ordered that the accused not be identified in the media and that he be known only as Mr. P.

When the order banning identification came up for review, the reviewing judge held that the discretion to make such an order should be exercised only in extraordinary circumstances and only when it is necessary to depart from the principle of a completely open trial. Mr. Justice Steel stated:

> If normal embarrassment is to be the [criterion] of suppressing the [name] of an individual then there would be such an argument in almost every case that is brought before the courts. Against this must be weighed the right of the public to know the facts so that they honestly, fairly and responsibly assess those facts without speculation.

The court lifted the ban on publication of the accused's identity and it was published in the media.

On the basis of its review, the Committee considers that, where the publication of an accused's identity will serve to identify his or her alleged sexual victim (for example, in prosecutions for incest), the young *victim's* identity can only effectively be protected by prohibiting the identification of the *accused* in the media and in the law reports. The larger, more general issue of identification of accused persons in the media prior to their conviction or guilty plea is not within the Committee's Terms of Reference.

Publishing the Identity of the Complainant

The *Criminal Code* contains two basic provisions restricting the publication of the identity of a sexual victim "in any newspaper or broadcast." Section 246.6 provides that, where an accused who is charged with a "sexual assault" offence under sections 246.1, 246.2 or 246.3 seeks to adduce evidence of the sexual activity of the complainant with persons other than the accused:

246.6(3) No evidence is admissible under subsection (1) unless the judge, magistrate or justice, after holding a hearing in which the jury and the members of the public are excluded and in which the complainant is not a compellable witness, is satisfied that the requirements of this section are met.

246.6(4) The notice given under subsection (2) and the evidence taken, the information given or the representations made at a hearing referred to in subsection (3) shall not be published in any newspaper or broadcast.

246.6(5) Every one who, without lawful excuse the proof of which lies upon him, contravenes subsection (4) is guilty of an offence punishable on summary conviction.

246.6(6) In this section, "newspaper" has the same meaning as in section 261.

Although pertinent in this context, the provisions of section 246.6 are directed more at the evidence adduced at such a hearing than at protecting the identity of the complainant *per se*.

A more specific provision authorizing the non-publication of the identities of complainants in sexual offence cases appears in section 442 of the *Criminal Code*, which provides:[16]

442(3). Where an accused is charged with an offence mentioned in section 246.4, the presiding judge, magistrate or justice may, or if application is made by the complainant or prosecutor, shall, make an order directing that the identity of the complainant and any information that could disclose the identity of the complainant shall not be published in any newspaper or broadcast.

442(3.1). The presiding judge, magistrate or justice shall, at the first reasonable opportunity, inform the complainant of the right to make an application for an order under subsection (3).

442(4). Every one who fails to comply with an order pursuant to subsection (3) is guilty of an offence punishable on summary conviction.

442(5). In this section, "newspaper" has the same meaning it has in section 261.

The offences referred to in secton 246.4 of the *Criminal Code* are: incest (s. 150); gross indecency (s. 157); sexual assault (s. 246.1); sexual assault with a weapon, threats to a third party, or causing bodily harm (s. 246.2); and aggravated sexual assault (s. 246.3). "Newspaper" in section 261 of the *Criminal Code* is defined as meaning "any paper, magazine or periodical containing public news, intelligence or reports of events, or any remarks or observations thereon, printed for sale and published periodically or in parts or numbers, at intervals not exceeding thirty-one days between the publication of any two such papers, parts or numbers, and any paper, magazine or periodical printed in order to be dispersed and made public, weekly or more often, or at intervals not exceeding thirty-one days, that contains advertisements, exclusively or principally."

Before considering the adequacy of these legal provisions in protecting the privacy of young sexual victims, the Committee's research findings are presented concerning the practices of Canadian newspapers and legal reporting services in publishing the identities of young victims of sexual offences.

Naming of Young Victims of Sexual Offences in Canadian Newspapers

In order to assess the extent to which Canadian newspapers respect the privacy of young complainants in cases involving sexual offences, the Committee monitored the practices of 34 leading and smaller newspapers. Over a period from mid-May, 1982 to mid-May, 1983, the Committee reviewed 2806 news articles concerning sexual offences and related matters. Information was obtained concerning the details reported in each story, with the primary focus being on those stories in which the names of sexual complainants had been reported. The newspapers reviewed were:

Newfoundland
- Corner Brook Western Star
- St. John's Telegram

Prince Edward Island
- Charlottetown Guardian

Nova Scotia
- Halifax Chronicle-Herald
- Sydney Cape Breton Post

New Brunswick
- Fredericton Gleaner
- Moncton L'Evangeline
- New Brunswick Telegraph-Journal

Quebec
- Le Devoir
- Le Dimanche Matin
- The Gazette
- La Presse

Ontario
- Barrie Examiner
- Hamilton Spectator
- Kingston Whig-Standard
- London Free Press
- North Bay Nugget
- Ottawa Citizen
- Owen Sound Sun-Times
- Thunder Bay Chronicle-Journal
- Toronto Globe and Mail
- Toronto Star
- Toronto Sun
- Windsor Star

Manitoba
- Thompson Citizen
- Winnipeg Free Press

Saskatchewan
- Regina Leader Post

Alberta
- Calgary Herald
- Edmonton Journal
- Lethbridge Herald

British Columbia
- Prince George Citizen
- Vancouver Sun
- Victoria Colonist
- Victoria Times

The findings of this review clearly indicate that these Canadian newspapers seldom reported the names of young victims of sexual offences. Information tending to identify sexual complainants was given in only 11 news stories (0.4 per cent). Of these, three stories concerned American cases in which the names of sexually abusive parents or step-parents were reported. Six stories

reported the identities of young complainants in Canadian cases. These stories included reports of:

- A sexual assault involving a 15 and a 16 year-old female.
- The sexual assault by a father of his eight year-old daughter (father's name reported).
- A case in which the father repeatedly committed incest with his daughter from the time the girl was 11 until she was 18 years-old (father's name reported).
- A case in which the offender indecently assaulted his two step-daughters, aged 13 and 16 at the time of the trial, over a five year period (offender's name reported).
- A case in which the accused was acquitted of living on the avails of the prostitution of his juvenile daughter and a 14 year-old boy (accused's name reported).

In addition, two stories were found in which sexual complainants were named, but whose ages were not reported. In one of these cases, the person accused of the sexual offence was acquitted.

A number of news reports contained information which might tend to identify the young victims of sexual offences. These included six stories which named the street or neighbourhood where the complainant or complainants lived. Nine stories from different newspapers reported allegations of sexual abuse involving young males at a group home. The reports included the name and location of the group home, the ages of the alleged victims, their ethnicity and the region from which they originally came.

The Committee found that the practice of Canadian newspapers which were reviewed with respect to restricting the publication of information which might serve to identify young victims of sexual offences was one of commendable restraint and circumspection. With few exceptions, the identities of young victims were not reported.

Naming of Young Victims of Sexual Offences in Canadian Legal Reporting Services

Early in the Committee's work, it became apparent that young victims of sexual offences were sometimes identified by name in the reports of legal judgments published by various commercial reporting services. These reporting services enjoy an extensive readership among judges, lawyers, law teachers and law students, and frequent resort to them is inevitable for anyone engaged in or preparing for the practice of law. Since the reasons for judgment of Canadian courts constitute an important primary source of what the law is in a particular area, the contents of these reporting services are a staple of professional life for most members of the legal community. For example, where the victim of a sexual offence is identified by name in a leading case on the criminal law of sexual

offences, potentially thousands of lawyers and aspiring lawyers are apt, at some time or another, to read about it. This invasion of the victim's privacy is compounded by the fact that legal judgments in which the names of sexual victims are disclosed are preserved, in bound volumes to which anyone has access, virtually indefinitely.

In order to document the extent of this problem, the research conducted by the Committee included:

1. A survey, particularly of cases reported between 1970 and 1982, of the reported case law pertaining to sexual offences.
2. The editor of each major legal reporting service and the Chief Justice or Chief Judge of every Canadian court having criminal jurisdiction was requested to inform the Committee of its policy in this regard.

Policies of Legal Reporting Services

The Committee contacted the major Canadian legal reporting services in order to obtain statements of policy concerning the reporting of cases involving the young victims of sexual offences. The reporting services contacted were:

- Newfoundland and Prince Edward Island Law Reports
- Nova Scotia Law Reports
- New Brunswick Law Reports
- Recueils de Jurisprudence du Quebec
- La Revue Legale
- Ontario Law Reports
- Manitoba Law Reports
- Saskatchewan Law Reports
- Alberta Law Reports
- British Columbia Law Reports
- Canadian Criminal Cases
- Criminal Reports
- Dominion Law Reports
- Federal Court Reports
- Supreme Court Reports
- Weekly Criminal Bulletin
- Western Weekly Reports

The replies received from these legal reporting services indicate that, in general, it is not their policy to publish information which may identify children and youths in cases involving sexual offences. The statements received included:

- The policy in this office is to identify sexual complainants by initials only. This is particularly true of children, whose identities we protect in any case in which identification seems likely to prove detrimental to the child's interests, including all juvenile delinquency and child protection cases. In cases which are not clear-cut, we prefer to err on the side of caution, using initials rather than names. On the basis of these guidelines, the identity of a child victim of a sexual offence should always be protected. I can conceive of no situation which would justify an exception to this general rule.

  For a number of years, our policy was to follow the practice of the courts,

deleting names only where the courts did so. Our current policy of protecting children and victims of sexual offences has evolved over the past seven or eight years, and has been applied fairly consistently since at least 1979. However, until recently, this policy was informal and was often a discretionary matter. In the past year, we have attempted to develop firm rules and to apply them consistently to all our reports. While there will always be an element of discretion in determining how far we should go in protecting the identities of the innocent, our present rules favour the deletion of names and other information identifying the victims of sexual offences.

- Our policy with respect to the publication of the names of children and youths and other sex complainants is simply that we comply with the provisions of the *Juvenile Delinquents Act* where the identity of a youthful accused is involved and we, of course, would delete the name of any complainant where the name had been deleted from the judgment before we receive it or when we have been requested to do so by the court. As you are no doubt aware with the recent amendments of the *Criminal Code*, the occasions on which the Court will make an order prohibiting the publication of the name of the complainant have increased and we, of course, comply with such orders where we are made aware of them.

  One matter that would be of assistance to us and which you may consider when making your recommendations is for the Courts to indicate clearly in some portion of the judgment whether or not an order has been made prohibiting the publication of the name of the complainant.

- The policy with respect to the identity of a complainant is to report what is contained in the judgment of the court. If the judgment of the court does not contain the name, or wishes the name not to be revealed, then it will not be revealed in the reported decision. There are no exceptions to this practice.

- Our policy with respect to this issue is not to reveal the identity, or any information that might disclose the identity, of complainants of sexual offences. There are no exceptions to this policy, and we take every precaution possible to ensure complete anonymity of sexual complainants.

  We rely primarily upon the judges who, in writing their judgments, normally would not identify a child or youth where it might prove embarrassing in the future. In some instances, we will take the initiative ourselves and use initials in place of a name.

Policies of Courts

The Committee contacted the chief judicial officers of 37 courts across Canada requesting information concerning statements of policy established with respect to identifying a complainant or children and youths in connection with sexual offence cases. The following replies are representative of the statements received.

- [This Court] has no uniform policy requiring the use of initials rather than names in either the style of cause or in the text of judgments for cases involving children or youths. The court considered the issue in 1975 and

conducted a review of cases since 1940 in which initials had been used. The cases considered included several related to infants and juveniles, five custody decisions of which three involved sexual perversion or unnatural offences. English practice also was considered.

The members of the Court are aware of the consequences of identifying a complainant or children and youths in connection with sexual offence cases, and where valid reasons exist, will delete the names of such persons or substitute initials. Factors to be considered include the nature of the sexual offence, the relationship, if any, between accused and complainant and the age of the child.

Members of the Court have become increasingly aware of this issue in recent years.

The Court may only be governed by the relevant provisions of the criminal law and the decisions of the various courts interpreting those provisions. In each individual case, the Court will hear evidence and submissions of counsel regarding identification of complainants and will make its decision on the basis of relevant statutory provisions and case law.

- [The Court follows] the procedures set out in section 442(3) of the *Criminal Code*. Some judges may have their own individual policies regarding the naming of the child, but there is no overall policy and the matter is left to the discretion of each judge.

- The Court has no general policy concerning the publication of the identities of complainants in sexual offence cases.

As an appellate court, [this Court] generally deals with points of law, so that it often finds it possible to dispose of these cases without listing the facts. Also, the Court notes that in criminal proceedings the Queen or the Crown, represented by one of Her officers, is the complainant, and not the victim of a sexual act. When the Court does find it necessary to refer to the victim, its practice is to use only the child's given name.

- [The Court] has no established policy concerning the reporting of names of children and youth. Publication is in the hands of certain private editors.

- The Court has no established policy with respect to naming the complainants in cases involving sexual offences against children.

When appeals are heard in open court, no great emphasis is placed on the identity of the complainant, but where the accused is a child's father or mother, it becomes almost impossible to conceal that name.

- [The Court] has no policy concerning publication of the names of complainants in sexual offence cases. The judges deal with this matter on a case-by-case basis, and in consideration of the relevant *Criminal Code* provisions.

The members of the Court are aware of the issue and in most instances would not find it necessary to mention the name of the complainant in giving reasons for judgment.

- There is no established Court policy concerning the publication of the names of juveniles. In the Criminal Division, judges and journalists are conscious of the fact that the names of juveniles involved in court proceedings are not to be published. Occasionally, where an adult is convicted of an offence, a juvenile's name may appear in print, but this is rare and probably results from inexperience of a media reporter.
- Certainly there is no policy concerning publication of the identity of complainant and, indeed, I am doubtful that there should be. In my view each case must be dealt with according to the particular situation.

  [This] Court primarily hears criminal cases and the identification of complainants is governed by the *Criminal Code*.
- There is no special policy concerning the publication or concealment of the name of a child who has been the victim of a sexual offence. There is little that the Court of Appeal can do to prevent disclosure, since by the time a case reaches it, the victim's name has already appeared on the indictment and very likely, has been stated in the proceedings and decision of the court below. In its judgments, the Court of Appeal could use an initial in place of the child's name, but even on this there is no defined policy. Perhaps there should be.
- Since 1974 the policy of . . . [this Court] . . . has been to refrain in written judgments or opinions from giving the names or, so far as possible, other particulars identifying persons subjected to sexual offences.

Reported and Unreported Cases

On the basis of its review, the Committee identified 189 cases in which the names of young Canadian victims of sexual offences had been disclosed in either the major legal reporting services or court transcripts. In the latter category, the cases reviewed constituted those which had not been published by any reporting service when the Committee conducted its review. In each of these cases, information was given in the Court's decision which either identifies or tends to identify the complainant. Since these decisions were not published by legal reporting services, the identification of the complainant must be attributed to the courts themselves rather than to the editors, publishers or to any other party.

In the examples given below, the use of an asterisk(*) indicates that, because the complainant was related to the accused, the 'style of cause' serves to identify the complainant as well as the accused. In these instances, in order to protect the complainant's privacy, the Committee has deleted the accused's name from the style of cause.

REPORTED CASES

Offence: Rape

R. v. Bresse, Vallieres and Theberge (1978), 48 C.C.C. (2d) 78 (Que. C.A.).

Complainant named. Age: 14. A friend of the complainant also named.

R. v. Trottier (1981), 58 C.C.C. (2d) 289 (B.C.C.A.).

Both complainants named. Ages: both 16. One complainant was raped and the other indecently assaulted.

*R. v. D.** (1981), 23 C.R. (3d) 56 (Ont. C.A.).

The two complainants' names indicated by style of cause. Accused's and complainant's address reported in a quotation from indictment. Ages: 6 and 17.

Offence: Incest

*R. v. M.** (1980), 55 C.C.C. (2d) 193 (Ont. C.A.).

Complainant's name indicated by style of cause, but not reported in text of decision. Decision concerned issue of spousal competence and compellability; accused's wife named.

*R. v. C.** (1982) 69 C.C.C. (2d) 81 (Ont. C.A.).

Complainant's name indicated by style of cause, but not reported in text of decision. Age: 13.

*R. v. I.** (1976), 1 A.R. 27 (C.A.).

Both female complainants (daughters of the accused) named. Ages: 17 and 19 at date of the appeal. Accused's other two daughters, aged 10 and 12, also named.

Offence: Sexual intercourse with a female under 14, and sexual intercourse with a female between 14 and 16

R. v. Kirby (1976), 24 Nfld. & P.E.I.R. 260 (Nfld. Prov. Ct.).

Complainant named in a quotation from the indictment. Age: 13. In text of the decision, she is stated to be "relatively well developed physically".

*R. v. V.** (1972), 18 C.R.N.S. 190 (B.C.C.A.).

Complainant named in a quotation from the indictment. Age: Between 14 and 16.

R. v. Belanger (1979), 46 C.C.C. (2d) 266, 8 C.R. (3d) S-10 (Ont. C.A.).

Complainant named. Age: 12.

R. v. Quesnel and Quesnel (1979), 51 C.C.C. (2d) 270 (Ont. C.A.).

Charges: sexual intercourse with a female under 14, sexual intercourse with a female between 14 and 16, gross indecency and indecent assault on a female.

All four complainants named in a quotation from the indictment. Ages: three complainants were under 14, one was between 14 and 16.

R. v. G., (1980), 53 C.C.C. (2d) 414 (Ont. C.A.).*

Complainant named in quotation from the indictment. Age: between 14 and 16.

Offence: Indecent assault on a female

R. v. Fletcher (1982), 1 C.C.C. (3d) 370 (Ont. C.A.).

Complainant named. Age: 13. Seven other children also named, one of whom was alleged to have been indecently assaulted by the accused.

Re Stillo and the Queen (1981), 56 C.C.C. (2d) 178 (Ont. H.C.).

Complainant named in a quotation from the indictment. Age: 7.

Offence: Gross indecency

Re Poirier and the Queen (1981), 62 C.C.C. (2d) 452 (Que. C.A.).

Both male complainants named. Ages: both 13.

*R. v. B.** (1982), 37 A.R. 177 (C.A.).

Both complainants named. Ages: 10 and 14 when the offences first were committed.

R. v. Bennett (1981), 30 Nfld. & P.E.I.R. 512, 84 A.P.R. 512 (Nfld. C.A.).

Male complainant named. Age: 14.

Offence: Indecent assault on a male

R. v. Robertson (1982), 39 A.R. 273 (C.A.).

Complainant named. Age: not reported, but complainant is stated to have been an infant when indecently assaulted. Also reported: the name of a female whom the accused kidnapped and sexually molested. Age: 3.

R. v. Troughton (1982) 3 C.C.C. (3d) 79 (Man. C.A.).

Both complainants named. Ages: 7 and 9.

R. v. Hopkins (1977), 23 N.S.R. (2d) 550 (C.A.).

Complainant named. Age: 13.

R. v. Pilgrim (1981), 64 C.C.C. (2d) 523 (Nfld. C.A.).

Both complainants named. Ages: 16 and 17.

UNREPORTED CASES

Offence: Incest

R. v. W., June 24, 1980 (Ont. S.C.).*

Charges: incest, indecent assault on a female. The complainant's name was indicated by the style of cause, in a quotation from the indictment, and in the text of the decision. The complainant was the daughter of the accused. Age: 6.

R. v. P., September 21, 1981 (Que. C.A.).*

The complainant's name was indicated by the style of cause, in a quotation from the indictment, and in the text of the decision. The complainant was the daughter of the accused. Age: 11.

R. v. M., February 12, 1979 (B.C.C.A.).*

The complainant's name was indicated by the style of cause and the text of the decision. The complainant was the daughter of the accused. Age: 15.

R. v. H., June 3, 1981 (B.C.C.A.).*

Charges: incest, gross indecency. The name of one of the complainants was indicated by the style of cause. He was the son of the accused. Age: 13.

R. v. J., December 1, 1976 (Man. C.A.).*

The name of the complainant was indicated by the style of cause. The complainant was the daughter of the accused. Age 12.

R. v. S., October 20, 1979 (Man. C.A.).*

The names of the complainants were indicated by the style of cause. They were the daughters of the accused. Ages: 12 and 15.

Offence: Sexual intercourse with a female under 14, and sexual intercourse with a female between 14 and 16

R. v. Fogarty, January 27, 1981 (Ont. S.C.).

Charges: sexual intercourse with a female under 14, indecent assault on a female. The complainant was named. Age: 13.

R. v. Kirby, November 15, 1976 (Nfld. D.C.).

The complainant was named in a quotation from the indictment but not in the text of the decision. Age: 13.

Offence: Indecent assault on a female

R. v. Burke, November 26, 1976 (Ont. C.A.).

The complainant was named in the quotation from the indictment and in the text of the decision. Age: 9.

Thibeau v. The Queen, April 20, 1979 (Ont. C.A.).

Charges: common assault, indecent assault, gross indecency. The three complain- ants were named. Ages: 9, 10 and 11.

R. v. B., March 30, 1981 (Ont. C.A.).*

Complainant's name indicated by style of cause, but not reported in text of decision. The complainant was the daughter of the accused. Age: 12.

R. v. Hudebine, January 22, 1979 (Ont. D.C.).

The three complainants were named. Ages: 12, 15 and 16.

R. v. Cloutier, May 13, 1981 (Ont. D.C.).

The complainant was named. Age: 14.

R. v. H., October 5, 1981 (Ont. D.C.).*

The complainant's name was indicated by the style of cause. She was the daughter of the accused. Age: 15.

R. v. Neiser, March 2, 1982 (Ont. D.C.).

The complainant was named. Age: 12.

R. v. Wells, October 19, 1977 (Alta. C.A.).

The complainant was named in a quotation from the indictment. Age: 13.

R. v. Lunn, November 18, 1981 (B.C.C.A.).

The two female complainants were named. Ages: 12 and 13.

R. v. I., August 25, 1980 (P.E.I. Prov. Ct.).*

The complainant's name was indicated by the style of cause. She was the sister of the accused. Age: 16.

Offence: Gross indecency

R. v. Bennett, March 3, 1981 (Nfld. C.A.).

The complainant was named. Age: 14.

R. v. Gendreau, October 2, 1979 (Man. Co. Ct.).

Charges: gross indecency, buggery, indecent assault on a male. The complainant's name was given. Age: started when the complainant was 11 and ended when he was 16.

R. v. Saunders, February 18, 1982 (B.C.C.A.).

Charges: gross indecency, assault with intent to commit buggery. The complainant was named. Age: 13.

Offence: Indecent assault on a male

R. v. White, October 4, 1978 (Ont. Co. Ct.).

The complainant was named. Age: 16.

R. v. Nelson, May 28, 1980 (Man. C.A.).

Charges: indecent assault on a male, gross indecency. The three complainants were named. Ages: 9, 12 and 13.

R. v. Racine, December 10, 1981 (Ont. Co. Ct.).

The complainant was named. Age: 12.

Offence: Unlawful intercourse

R. v. O., December 1, 1976 (Man. C.A.).*

The complainant's name indicated by the style of the cause. She was the step-daughter of the accused. Age: 9.

R. v. Tomigo, June 30, 1981 (Ont. C.A.).

The three complainants were named in a quotation from the indictment and in the text of the decision. Ages: under 14.

The Committee's summary findings listed in Table 22.1 indicate that about three in five cases (58.7 per cent) in which complainants were identified occurred between 1970 and 1982. Between 1980 and 1982, there were 54 cases, averaging 18 cases each year which were equally divided between reported and unreported cases.

The types of cases in which children and youths were identified were:

Type of Sexual Offence	Number	Per Cent
Rape	36	19.0
Attempted rape	3	1.6
Incest	33	17.5
Sexual intercourse with female under 14, and 14 but under 16	27	14.3
Indecent assault female	22	11.6
Gross indecency	13	6.9
Indecent assault male	12	6.4
J.D.A., section 33	4	2.1
Other offences	39	20.6
TOTAL	189	100.0

About nine in 10 of the young complainants who were named were females (88.4 per cent) and the remainder were males (11.6 per cent). Included in the 'Other' category of offences were: unlawful intercourse, seduction under promise of marriage, seduction of a female between ages 16 and 18, sexual intercourse with the feeble-minded and corruption of children.

Table 22.1
The Naming of Young Victims of Sexual Offences in Judgments of Canadian Courts

Level of Court	Year of Occurrence							
	Before 1970		1970–79		1980–82		Total	
	Reported Cases	Unreported Cases	Reported Cases	Unreported Cases	Reported Cases	Unreported Cases	Reported Cases	Unreported Cases
Newfoundland								
• Court of Appeal	—	—	—	—	2	1	2	1
• Supreme Court, Trial Division	—	—	—	—	—	—	—	—
• Provincial Court	—	—	1	—	—	—	1	—
• District Court	—	—	1	—	—	—	1	—
Prince Edward Island								
• Supreme Court	—	—	—	—	1	—	1	—
• Provincial Court	—	—	—	—	—	1	—	1
Nova Scotia								
• Supreme Court, Appeal Division	9	—	6	3	1	—	16	3
• Supreme Court, Trial Division	4	—	—	—	—	—	4	—
• Provincial Court	—	—	—	—	—	—	—	—
New Brunswick								
• Court of Appeal	2	—	—	—	—	—	2	—
• Supreme Court/ Court of Queen's Bench	1	—	—	—	—	—	1	—

(continued . . .)

Table 22.1 (continued)

The Naming of Young Victims of Sexual Offences in Judgments of Canadian Courts

Level of Court	Year of Occurrence							
	Before 1970		1976–79		1980–82		Total	
	Reported Cases	Unreported Cases	Reported Cases	Unreported Cases	Reported Cases	Unreported Cases	Reported Cases	Unreported Cases
Quebec								
• Court of Appeal	8	—	4	—	3	1	15	1
• Superior Court/ Court of Queen's Bench	3	—	—	—	—	—	3	—
• Court of Sessions	1	—	—	—	—	—	1	—
Ontario								
• Supreme Court/ Court of Appeal	12	—	9	6	7	4	28	10
• Supreme Court/ High Court of Justice	—	—	2	—	1	3	3	3
• Provincial Court	—	—	—	—	—	1	—	1
• County Court	1	—	—	2	—	—	1	2
• District Court	—	—	—	1	—	3	—	4
Manitoba								
• Court of Appeal	3	—	—	3	2	2	5	5
• Court of Queen's Bench	1	—	—	—	—	—	1	—
• Provincial Court	—	—	—	—	—	1	—	1
• County Court	—	—	1	—	1	1	2	1
Saskatchewan								
• Court of Appeal	6	—	3	—	1	—	10	—
• Supreme Court/ Court of Queen's Bench	1	—	—	—	—	—	1	—
• District Court	1	—	—	—	—	—	1	—

(continued . . .)

Table 22.1 (concluded)

The Naming of Young Victims of Sexual Offences in Judgments of Canadian Courts

Level of Court	Year of Occurrence							
	Before 1970		1976–79		1980–82		Total	
	Reported Cases	Unreported Cases	Reported Cases	Unreported Cases	Reported Cases	Unreported Cases	Reported Cases	Unreported Cases
Alberta								
• Court of Appeal	6	—	3	—	5	1	14	1
• Court of Queen's Bench/Supreme Court	—	—	1	—	—	—	1	—
• Provincial Court	—	—	—	1	—	1	—	2
• District Court	—	—	1	1	1	—	2	1
British Columbia								
• Court of Appeal	8	—	3	1	1	4	12	5
• Supreme Court	2	—	1	1	—	1	3	2
• Provincial Court	—	—	—	—	—	—	—	—
• County Court	—	—	—	—	—	2	—	2
Yukon								
• Court of Appeal	1	—	—	—	—	—	1	—
Northwest Territories								
• Supreme Court	2	—	—	—	—	—	2	—
Canada								
• Supreme Court of Canada	6	—	1	—	1	—	8	—
• Court Martial Appeal Court of Canada	—	—	—	1	—	—	—	1
TOTAL	78	—	37	20	27	27	142	47

It is clearly evident from the findings that, while cases in which children and youths were named are notably absent in recent years for a number of Canadian courts, the dimensions of this problem are national in scope. **With respect to the likelihood of being named, the young complainants of sexual offences are at greater risk of being identified in the published accounts of legal reporting services and the transcripts of court decisions than they are of such disclosures being made in the nation's newspapers.**

Particularly disturbing in regard to the naming of young complainants are the performances of provincial Courts of Appeal, given their prominent status in Canadian law and the precedential value of their criminal law judgments. Of the 111 cases between 1970 and 1982 identifying young complainants of sexual offences, over two-thirds (68.5 per cent) involved decisions of Courts of Appeal. As a general rule, the higher the level of court, the more likely it is that its criminal law judgments will be commercially reported, and hence the more likely that these judgments (and the names of sexual victims identified therein) will reach a wide readership in the legal community. The Committee's research findings indicate that several provincial Courts of Appeal in Canada have been careless and shown little sensitivity to this issue.

Summary

Since only a fairly comprehensive review of cases in which young victims of sexual offences were identified was conducted for the period between 1970 and 1982, the findings presented constitute a conservative estimate of the extent of this problem. In considering the implications of the findings, however, it is pertinent also to consider earlier instances in which such disclosures were made. For all persons named in these legal documents, a durable and accessible record has been established which discloses their identities for the remainder of their lives, whether they are youths or adults.

On the basis of their statements of policy, the Committee is aware that judges and legal editors are becoming attentive to this problem and seeking to act accordingly. However, in this regard there can be no doubt that existing safeguards are ineffective and that the overall record of legal reporting services and Canadian courts is unsatisfactory.

In the Committee's judgment, this practice which may be harmful to children is an unacceptable invasion of their privacy. It should cease.

Although the commercial reporting of legal decisions involves both the courts and the legal reporting services, the responsibility for ensuring that the identities of victims of sexual offences are not disclosed lies, in the Committee's opinion, primarily with the courts and with their administrative personnel. If appropriate deletions are made "at the source," there is no possibility that victims of sexual offences will subsequently be identified in commercially published legal reports, which are dependent on this source. In the Committee's view, this responsibility of the courts should be given express statutory force by

way of immediate amendments to the *Criminal Code*. The Committee's research findings indicate that the record of provincial family courts, acting under express statutory guidelines in provincial enactments, is exemplary in this regard; it is not unreasonable to assume that Canadian courts of criminal jurisdiction would be equally attentive in the face of a clear directive from Parliament.

Accordingly, **the Committee recommends that the *Criminal Code* be amended to provide that:**

1. **In relation to any sexual offence contained in Part IV, Part V, or Part VI of the *Criminal Code*, no one shall publish any report in which the Christian name or surname of the child, or in which any information serving to identify the child, is disclosed.**

2. **"Information serving to identify the child" includes, but is not restricted to:**

   (i) the name of the offender, where the offender is biologically or legally related to the child, or has the same name as the child;

   (ii) the address of the accused or the child;

   (iii) the school that the child attends, or the child's place of employment;

   (iv) the address or location where the offence is alleged to have been committed; and

   (v) the names of any witnesses whose relationship to the child or to the accused might give an indication of the child's identity.

3. **The prohibition referred to in point (1) above is automatic, and does *not* require an application by the complainant, the Crown or the accused.**

4. **The prohibition attaches immediately upon either the laying of an information against the accused, the preferring of an indictment against the accused, or the arrest of the accused, whichever occurs first.**

5. **The prohibition is of indefinite duration, and attaches to all stages of the proceedings.**

6. **The prohibition extends to the print media, the electronic media, published court transcripts and the legal reporting services.**

7. **Any one who fails to comply with this provision is guilty of an offence punishable on summary conviction.**

(Implementation of these recommendations will require consequential amendments to sections 246.6, 261, 442, 457.2, and 467 of the *Criminal Code*, and to sections 38 and 16 of the *Young Offenders Act*).

The Committee further recommends that each court having criminal jurisdiction in Canada designate an officer whose responsibility it is to ensure that these provisions are complied with, and that each legal reporting service in Canada do likewise.

In the judgment of the Committee, prompt implementation of these recommendations will help to ensure that children and youths who have been victims of sexual offences are treated by the legal system with the respect and consideration that is due to them.

References

Chapter 22: Publication of Victims' Names

[1] Robertson, *Courts and the Media* (Toronto: Butterworth, 1981) at 167-68.

[2] *Newfoundland: Welfare of Children Act*, R.S.N. 1970, c. 190, *as am.* S.N. 1973, c. 48, ss. 12 and 13.

Prince Edward Island: Family and Child Services Act, S.P.E.I. 1981, c. 12, s. 48.

Nova Scotia: Children's Services Act, S.N.S. 1976, c. 8, s. 59(2).

New Brunswick: Child and Family Services and Family Relations Act, S.N.B. 1980, c.C-2.1, s. 10.

Quebec: Youth Protection Act, S.Q. 1977, c. 20, s. 83.

Ontario: Child Welfare Act, R.S.O. 1980, c. 66, s. 57(7).

Alberta: Child Welfare Act, R.S.A. 1980, c.C-8, ss. 4 and 5.

British Columbia: Provincial Court Act, R.S.B.C. 1979, c. 341, s. 3.

[3] *Re Proulx and The Queen* (1975), 27 C.C.C. (2d) 44 (Ont. Prov. Ct.). See also *Re R (M.J.), an infant*, [1975] 2 All E.R. 749.

[4] *Re Proulx and The Queen*, *ibid.*, and see generally Robertson, *supra*, note 1 at 225-26.

[5] *Re A.G. Man. and Radio O.B. Ltd.* (1976), 31 C.C.C. (2d) 1 (Man. Q.B.). That the prohibition on publishing a child's identity in delinquency proceedings extends to the electronic media is implicit in the Supreme Court of Canada decision in *C.B. and the Queen* (1981), 3 C.R. (3d) 289.

[6] *Re Juvenile Delinquents Act* (1975), 29 C.C.C. (2d) 439 (Ont. Prov. Ct.); *Re Proulx and the Queen*, *supra*, note 3.

[7] *Young Offenders Act*, S.C. 1980-81-82, c. 110, s. 38(2).

[8] Robertson, *supra*, note 1 at 23.

[9] *Cr. Code*, s. 457.2. See *Re Forget and The Queen* (1982), 65 C.C.C. (2d) 373 (Ont. C.A.).

[10] *Cr. Code*, s. 467. In *R. v. Banville* (1983), 3 C.C.C. (3d) 312 (N.B.Q.B.), it was held that s. 467 is not inconsistent with the *Charter of Rights and Freedoms*.

[11] Robertson, *supra*, note 1 at 202 (emphasis added).

[12] *R. v. P.* (1978), 41 C.C.C. (2d) 377 (Ont. H.C.J.). See also *Re Regina v. Strupp et al.* (1982), 2 C.C.C. (3d) 111 (Ont. H.C.J.).

[13] *Re Firth* (1979), 4 W.C.B. 142, cited in Robertson, *supra*, note 1 at 189.

[14] See also on this point *Re F.P. Publications (Western) Ltd.* (1979), 51 C.C.C. (2d) 110 (Man. C.A.); and *Re Vaudrin and the Queen* (1982), 2 C.C.C. (3d) 214 (B.C.S.C.).

[15] (1978), 43 C.C.C. (2d) 197 (Ont. H.C.J.), *reversed on other grounds* 4 C.R. (3d) 121 (Ont. C.A.).

[16] See generally Mewett, *Public Criminal Trials* (1978-79), 21 Cr. L.Q. 199. For a case which elaborates the procedural requirements of a Crown application under s. 442(3), see *R. v. Calabrese and Renard* (No. 3) (1981), 64 C.C.C. (2d) 71 (Que. S.C.).

Chapter 23

The Canadian Charter of Rights and Freedoms

The *Canadian Charter of Rights and Freedoms* was proclaimed in force on April 17, 1982. As a central component of the *Constitution Act, 1982*, the *Charter* is part of the supreme law of Canada: any federal, provincial, territorial or municipal law that is inconsistent with its provisions is, to the extent of the inconsistency, of no force or effect.[1] By virtue of its entrenched status in Canadian constitutional law, the *Charter* imposes a new set of limitations on the powers of Parliament and the provincial legislatures and overrides any statute that is inconsistent with its provisions.[2]

Among the legal rights and fundamental freedoms accorded constitutional protection in the *Charter* are:

- The right to life, liberty and security of the person and the right not to be deprived thereof except in accordance with the principles of fundamental justice;
- The right to be secure against unreasonable search or seizure;
- The right not to be arbitrarily detained or imprisoned;
- The right of any person charged with an offence to be presumed innocent until proven guilty according to law in a fair and public hearing by an independent and impartial tribunal;
- The right not to be subjected to any cruel and unusual treatment or punishment;
- Freedom of conscience and religion;
- Freedom of thought, belief, opinion and expression, including freedom of the press and other media of communication;
- Freedom of association.

Section 15(1) of the *Charter* further provides that "every individual is equal before and under the law and has the right to the equal protection and equal benefit of the law without discrimination and, in particular, without discrimination based on race, national or ethnic origin, colour, religion, sex, age or mental or physical disability." This provision, however, does not come into effect until April 17, 1985.[3]

Anyone whose rights or freedoms, as guaranteed by the *Charter*, have been infringed or denied may apply to a court to obtain "such remedy as the court considers appropriate and just in the circumstances."[4] On the other hand, Parliament or a provincial legislature may expressly declare that a statute or provision thereof shall operate notwithstanding specified sections of the *Charter*[5]; such a declaration ceases to have effect five years after it comes into force, or on such earlier date as is specified in the declaration.[6]

While the *Charter* guarantees the enjoyment of certain basic rights and freedoms, and provides for legal remedies in the event of their infringement or denial, it also recognizes that individual rights and freedoms are not constitutional absolutes. Section 1 of the *Charter* states that:[7]

> The *Canadian Charter of Rights and Freedoms* guarantees the rights and freedoms set out in it *subject only to such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society.*

Although the judicial interpretation of *Charter* provisions to date must be viewed somewhat tentatively,[8] Canadian courts have nonetheless provided a measure of guidance concerning the requirements of Section 1. Where a limit on a fundamental right or freedom contained in the *Charter* is shown, the burden rests with the party claiming the benefit of such limit to establish that it is a reasonable limit which can be demonstrably justified in a free and democratic society. The "reasonableness" and "demonstrable justification" of such limit may be established by adducing evidence, by explaining the terms and purposes of the limiting law and its economic, social and political background, and by referring to comparable legislation in other acknowledged free and democratic societies.[9] A limit should be considered "reasonable" if it employs a means proportionate to the end at which the law is directed, and courts should not lightly substitute their opinion for that of the representative law-making body.[10] The limit must, however, have legal force in order to withstand constitutional challenge: a limitation which is imposed solely by administrative discretion cannot be considered a limit "prescribed by law."[11]

In determining whether a statutory provision is constitutionally consistent with the fundamental standards set forth in the *Charter*, Canadian courts will have to address themselves to two questions. First, does the provision "infringe" or "deny" any of the rights and freedoms enumerated in the *Charter*? Second, if the answer to the first question is yes, can the infringement be considered reasonable and demonstrably justified in a free and democratic society?[12] This process of constitutional adjudication of individual rights can be better understood in the context of specific legal issues raised since the advent of the *Charter*. Legal challenges under the *Charter* have generated a number of issues relevant to the Committee's mandate, particularly in relation to: child welfare proceedings; *Criminal Code* sexual offences; the sentencing of offenders; publicity; and the legal regulation of obscene materials.

Child Welfare Proceedings

- *Issue:* whether a provincial child welfare statute which provides that a child welfare authority may authorize medical treatment, including blood transfusions, for a neglected child, offends against the *Charter's* guarantee of freedom of conscience and religion.[13]

- *Issue:* whether the apprehension of a child apparently in need of protection, pursuant to authorization in a child welfare statute, constitutes a reasonable and justifiable limit on freedom of association.[14]

- *Issue:* whether the apprehension of a child pursuant to child welfare legislation constitutes a "detention" within the meaning of section 9 of the *Charter*, which provides that "everyone has the right not be arbitrarily detained or imprisoned."[15]

- *Issue:* whether the removal of a child from his or her parents pursuant to child welfare legislation constitutes "cruel and unusual treatment or punishment."[16]

- *Issue:* whether evidence of the environment in which a child is being raised should be excluded from a proceeding to determine whether the child is in need of protection, on the ground that it was improperly obtained and hence might serve to bring the administration of justice into disrepute.[17]

Criminal Code Sexual Offences

- *Issue:* whether the offence in section 146(1) of the *Criminal Code*, which proscribes sexual intercourse with a female under 14, and which excludes mistake as to the age of the female as a defence, offends against the right not to be deprived of life, liberty or security of the person except in accordance with the principles of fundamental justice.[18]

Sentencing of Offenders

- *Issue:* whether mandatory minimum sentences of imprisonment in penal statutes offend against the right not be deprived of life, liberty or security of the person except in accordance with the principles of fundamental justice.[19]

- *Issue:* whether the preventive detention provisions relating to dangerous offenders in Part XXI of the *Criminal Code* contravene the right not to be arbitrarily detained or imprisoned.[20]

- *Issue:* whether the preventive detention provisions relating to dangerous offenders in Part XXI of the *Criminal Code* constitute "cruel and unusual treatment or punishment."[21]

Publicity

- *Issue*: whether a provincial child welfare statute, which gives the court power to exclude any member of the public from a child welfare proceeding in specified circumstances, offends against the *Charter's guarantee of freedom of the press*.[22]
- *Issue*: whether section 12 of the *Juvenile Delinquents Act*, which requires that the trials of juveniles shall be held *in camera*, offends against the *Charter's* guarantee of freedom of the press.[23]
- *Issue*: whether the right of a person charged with an offence to a "public hearing," contained in section 11(d) of the *Charter*, applies to civil, child welfare proceedings instituted to determine whether a child is in need of protection.[24]
- *Issue*: whether section 442 of the *Criminal Code*, which provides for the exclusion of the public from criminal trials in specified circumstances, contravenes the right of a person charged with an offence to a "public hearing."[25]

Legal Regulation of Obscene Materials

- *Issue*: whether the "obscenity" provisions in section 159 of the *Criminal Code* constitute reasonable limits on freedom of expression which can be demonstrably justified.[26]
- *Issue*: whether the prohibition in the federal *Customs Tariff* against the importation of books and other materials of an "immoral or indecent character" constitutes a reasonable limit on freedom of expression which can be demonstrably justified.[27]

Summary

That the protection of individual rights and freedoms in the *Charter* does not imply the paralysis of law enforcement is apparent both from legal decisions rendered to date and from explicit statements by Canadian courts.[28] Even so, the *Charter* obliges courts to consider the reasonableness of and justifications for the limits placed by government on individual rights and freedoms enumerated in the *Charter*. As Mr. Justice Laforest of the New Brunswick Court of Appeal has observed, this new judicial role should profoundly affect the sources on which courts will rely for guidance.[29] It is in this respect that the Committee's findings and recommendations are most relevant to the issues posed by the *Charter*.

In the course of its work, the Committee has collected extensive information on the nature and occurrence of child sexual abuse and exploitation in Canada, and on the manner in which Canadian social and legal institutions respond to it. The Committee's findings highlight the operation of the Canadian legal system in relation to matters within the Committee's mandate,

and the practical and conceptual deficiencies in the law from the standpoint of child protection. On the basis of a close scrutiny of these findings, the Committee has recommended, for example, specific legal reforms to *Criminal Code* sexual offences and to the rules of evidence in proceedings relating to child sexual abuse.

In the view of the Committee, each of its legal recommendations is, in light of the research findings, necessary in order to provide young persons with optimal protection against sexual abuse and exploitation. The justifications for each reform are given in different parts of this Report. The end sought to be achieved in each case is the protection of young persons; the legislative means proposed to achieve it are proportionate to that end. In the Committee's judgment, these proposed reforms to the law constitute an appropriate and tailored response to the special needs and substantial vulnerabilities of Canadian children and youths.

REFERENCES

Chapter 23: The Canadian Charter of Rights and Freedoms

[1] *Constitution Act, 1982*, s. 52.

[2] See Hogg, *Supremacy of the Canadian Charter of Rights and Freedoms* (1983), 61 Can. Bar Rev. 69; and Laforest, *The Canadian Charter of Rights and Freedoms: An Overview* (1983), 61 Can. Bar Rev. 19.

[3] *Canadian Charter of Rights and Freedoms*, s. 32(2). Of course, the "equality before the law" clause in s. 1(b) of the *Canadian Bill of Rights* continues to operate: see Tarnopolsky, *The Equality Rights in the Canadian Charter of Rights and Freedoms* (1983), 61 Can. Bar Rev. 242.

[4] *Canadian Charter of Rights and Freedoms*, s. 24(1).

[5] *Canadian Charter of Rights and Freedoms*, s. 33(1).

[6] *Canadian Charter of Rights and Freedoms*, ss. 33(2)-33(5).

[7] Emphasis added.

[8] At the time of this writing, the Supreme Court of Canada had not yet decided any of the numerous appeals relating to the interpretation of the *Charter*.

[9] *Re Southam Inc. and The Queen (No. 1) (1983)*, 3 C.C.C. (3d) 515 (Ont. C.A.).

[10] *Quebec Association of Protestant School Boards et al. v. Attorney General of Quebec et al. (No 2) (1982)*, 140 D.L.R. (3d) 33 (Que. Sup. Ct.), *affd* June 9, 1983 (Que. C.A.).

[11] *Re Ontario Film and Video Appreciation Society and Ontario Board of Censors* (March 25, 1983), 19 A.C.W.S. (2d) 62 (Ont. Div. Ct.).

[12] B. Hovius and R. Martin, *The Canadian Charter of Rights and Freedoms in the Supreme Court of Canada* (1983), 61 Can. Bar Rev. 354.

[13] *Re Davis*, August 15, 1982, Alta. Prov. Ct. (Fam. Div.).

[14] *Re S. et al and Minister of Social Services* (June 27, 1983), 21 A.C.W.S. (2d) 219 (Sask. Q.B.).

[15] *Ibid.*

[16] *Ibid.*

[17] *Re W. and Children's Aid Society of Regional Municipality of York* (November 5, 1982), 17 A.C.W.S. (2d) 147 (Ont. Prov. Ct.).

[18] *R. v. Stevens* (1983), 3 C.C.C. (3d) 198 (Ont. C.A.).

[19] *R. v. Newell (No. 4) et al.* (1982), 70 C.C.C. (2d) 10 (B.C.S.C.).

[20] *R. v. Simon (No. 3) (1982)*, 69 C.C.C. (2d) 557 (N.W.T.S.C.); *Re Mitchell and The Queen* (July 7, 1983), 10 W.C.B. 235 (Ont. H.C.J.).

[21] *R. v. Simon (No. 3)*, *ibid.*

[22] *Re S.D.A.* (1982), 28 R.F.L. (2d) 121 (B.C. Prov. Ct.).

[23] *Re Southam Inc. and The Queen (No. 1)*, *supra*, note 9.

[24] *Re C. et al.* (June 23, 1983), 21 A.C.W.S. (2d) 311 (Alta. Prov. Ct.). See generally Beckton, *Freedom of Expression — Access to the Courts* (1983), 61 Can. Bar Rev. 101.

[25] *R. v. L'Espérance* (April 28, 1982), 8 W.C.B. 352 (Que. Ct. Sess.).

[26] *R. v. Red Hot Video Ltd.* (May 12, 1983), 10 W.C.B. 153 (B.C. Prov. Ct.).

[27] *Re Luscher and Deputy Minister, Revenue Canada Customs and Excise* (June 30, 1983), 20 A.C.W.S. (2d) 509 (B.C. Co. Ct.).

[28] See especially *R. v. Altseimer* (1982), 1 C.C.C. (3d) 7 (Ont. C.A.).

[29] Laforest, *supra*, note 2. On the use of opinion polls in constitutional adjudication, see Gibson, *Determining Disrepute: Opinion Polls and the Canadian Charter of Rights and Freedoms* (1983), 61 Can. Bar Rev. 377.

Table 22.1 (continued)

Part IV

Police Services

Table 22.1 (continued)

Chapter 24

Police Investigation

The 'general occurrence form' was the primary source of information for the findings obtained in the National Police Force Survey in which 28 police forces from all parts of Canada participated. The summary of the police investigation of cases of alleged child sexual abuse given in Chapter 7, *Dimensions of Sexual Assault*, is expanded in this Part of the Report. In this chapter, information is given concerning the time taken by complainants in reporting offences to the police, whether the police regarded these complaints as being 'founded' or 'unfounded', the laying of criminal charges and the reasons why charges were not laid. In Chapter 25, *Elements of the Offences*, information is given concerning the acts committed in relation to their classification as sexual offences specified in the *Criminal Code*.

The 'general occurrence form' is an internal report which records the narrative of events given by the victim, complainant (in police terminology, the "complainant" is the person who notifies the police), or witness to the first officer on the scene. It is largely from the information on these forms that police forces compile statistical information on overall crime rates. Because of the different practices among Canadian police forces, the completeness of the information recorded in the general occurrence form varies from city to city. In larger police forces, the first officer on the scene is usually involved only with the writing of the occurrence. This officer will then submit the form to a sergeant, who in turn will forward it to a specialized investigative unit for consideration. Should a follow-up be required, the investigators will re-interview the relevant parties. It is at this stage that the more technical legal and evidentiary questions are considered and a follow-up report submitted.

In the majority of the police forces participating in the survey, it is not the responsibility of the first officer to carry out the entire investigation. If, however, the officer happens upon the suspect at this initial stage, the occurrence form will contain a complete account of the event and will note whether an arrest was made. In smaller police forces, where manpower is at a premium, the officer called to the scene will also typically become the investigating officer responsible for the case. Accordingly, the general occurrence form will contain all information required for a case preparation in the event charges are laid.

Due to the "contemporaneous" nature of the information recorded on police occurrence forms, the findings presented are limited in certain respects from a strictly legal point of view. For example, although the investigating officer may consider that the occurrence discloses the offence of "incest", later discussions with the Crown attorney may indicate that a different criminal charge would be either more appropriate or more expedient in the circumstances. For evidentiary or other reasons, the charge against the accused may be withdrawn (which vacates the charge unless a new charge is subsequently laid) or the proceedings "stayed" (which suspends them until the Crown directs otherwise). The accused might agree to plead guilty to one charge in consideration of the withdrawal of other charges outstanding against him or her, which is one form of the practice known colloquially as "plea bargaining". Alternatively, the charge or charges against the accused might be dropped on the condition that he or she undergo some form of therapy; this practice is known as "pre-trial diversion". Where neither of the above occurs, the accused might nevertheless be acquitted at trial, and this legal result challenged on appeal. Since each of the 6203 cases was not followed up to its eventual conclusion, the findings do not provide information concerning these "longitudinal" aspects of law enforcement. (Information in this regard was collected by the Committee from other sources, particularly with respect to sentencing and corrections).

Accepting these limitations, however, the findings obtained are highly relevant to the social assumptions upon which the Canadian law of sexual offences against young persons has hitherto been based. Their strength lies in the extensive detail with which they describe the investigation of alleged child sexual abuse from a police perspective. The information presented constitutes a necessary empirical foundation from which the Committee derived a substantial proportion of its recommendations for law reform presented in Part III of the Report.

The information given in this chapter, unless otherwise specified, describes 4143 cases investigated by the police of alleged sexual assaults involving children and youths who were 20 years-old and younger. Findings concerning acts of exposure are considered separately in Chapter 8, *Acts of Exposure* and Chapter 9, *Exposure Followed by Assault*. The findings given in this chapter vary slightly from those given in Chapter 7, *Dimensions of Sexual Assault*. In the latter, the experience of children and youths age 15 and younger is considered while in this chapter, findings are presented for children and youths age 20 and younger.

Reporting the Offence

As noted in Chapter 7, *Dimensions of Sexual Assault*, in comparison with victims who were known to other public services, those who sought police assistance did so more promptly. Most offences were reported to the police within 24 hours (65.3 per cent); more than three-quarters of the offences were reported to the police within one week of their occurrence (76.4 per cent). A

small portion of these offences, however, was not reported to the police until after a delay of more than six months (7.8 per cent). There is no significant variation in these time intervals based on the sex of the victim.

Interval Taken To Report Offence	Male Victims	Female Victims	Total
	Accum. %	Accum. %	Accum. %
Offence reported within 24 hours	60.2	66.4	65.3
Offence reported within 1 week	74.3	76.9	76.4
Offence reported within 6 months	95.2	91.5	92.2
Offence reported over 6 months after occurrence	100.0	100.0	100.0

There is no consistent trend between the time taken by female victims or by persons on their behalf to report the offence and the police decision to lay a criminal charge (Table 24.1). Of the 486 cases (15.9 per cent of the total) in which the offence was reported to the police more than a month after its occurrence, the proportion of charges laid is greater than that for cases in which the

Table 24.1

Interval Taken by *Female* Victims to Report Offence to the Police: Charges Laid

Interval Taken to Report Offence by Victim	Charges Against Suspects					
	Not Laid		Laid		Total	
	Number	Per Cent	Number	Per Cent	Number	Per Cent
Immediately	796	62.1	485	37.9	1,281	100.0
Within 4 hours	212	63.9	120	36.1	332	100.0
Within 8 hours	82	69.5	36	30.5	118	100.0
Within 12 hours	50	62.5	30	37.5	80	100.0
Within 16 hours	22	59.5	15	40.5	37	100.0
Within 24 hours	130	70.7	54	29.3	184	100.0
Within 1-3 days	114	62.0	70	38.0	184	100.0
Within 4-7 days	90	65.7	47	34.3	137	100.0
Under 1 month	135	60.8	87	39.2	222	100.0
Under 6 months	129	57.1	97	42.9	226	100.0
Under 12 months	38	50.7	37	49.3	75	100.0
Over 1 year	83	44.9	102	55.1	185	100.0
TOTAL	1,881	61.4	1,180	38.6	3,061	100.0

National Police Force Survey. Information missing for 310 cases.

police were notified more promptly. As in the case of female sexual victims, there is no consistent trend between the time taken by male victims or by persons on their behalf to report the offence and the police decision to lay a criminal charge. Of the 105 cases (15.8 per cent of the total) listed in Table 24.2 in which the offence was reported more than a month after its occurrence, the proportion of charges laid was greater than that for cases in which the police were notified more promptly.

Table 24.2

Interval Taken by *Male* Victims to Report Offences to the Police: Charges Laid

Interval Taken to Report Offence by Victim	Charges Against Suspects					
	Not Laid		Laid		Total	
	Number	Per Cent	Number	Per Cent	Number	Per Cent
Immediately	158	59.9	106	40.1	264	100.0
Within 4 hours	35	58.3	25	41.7	60	100.0
Within 8 hours	7	58.3	5	41.7	12	100.0
Within 12 hours	6	54.6	5	45.5	11	100.0
Within 16 hours	4	66.7	2	33.3	6	100.0
Within 24 hours	29	61.7	18	38.3	47	100.0
Within 1-3 days	30	55.6	24	44.4	54	100.0
Within 4-7 days	26	65.0	14	35.0	40	100.0
Under 1 month	37	56.1	29	43.9	66	100.0
Under 6 months	31	42.5	42	57.5	73	100.0
Under 12 months	3	18.8	13	81.2	16	100.0
Over 1 year	6	37.5	10	62.5	16	100.0
TOTAL	372	55.9	293	44.1	665	100.0

National Police Force Survey. Information missing for 107 cases.

When only those offences involving the specific sexual acts of vaginal and attempted vaginal intercourse with females, and anal and attempted anal intercourse with males and females are considered, the non-relationship between the time taken to report the offence and the police decision to lay a criminal charge is even more apparent. With respect to offences involving *vaginal or attempted vaginal intercourse with a female*, the time taken by the female victim or by someone on the victim's behalf to notify the police was not a critical factor in the police decision to lay a criminal charge (Tables 24.3 and 24.4).

Table 24.3

Interval Taken by Female Victims to Report Offences Involving *Vaginal Intercourse* to the Police: Charges Laid

Interval Taken to Report Acts of Vaginal Intercourse by Victims	Charges Against Suspects					
	Not Laid		Laid		Total	
	Number	Per Cent	Number	Per Cent	Number	Per Cent
Immediately	90	48.9	94	51.1	184	100.0
Within 4 hours	45	60.8	29	39.2	74	100.0
Within 8 hours	28	73.7	10	26.3	38	100.0
Within 12 hours	19	90.5	2	9.5	21	100.0
Within 16 hours	1	25.0	3	75.0	4	100.0
Within 24 hours	22	62.9	13	37.1	35	100.0
Within 1-3 days	22	52.4	20	47.6	42	100.0
Within 4-7 days	17	60.7	11	39.3	28	100.0
Under 1 month	28	58.3	20	41.7	48	100.0
Under 6 months	36	63.2	21	36.8	57	100.0
Under 12 months	10	38.5	16	61.5	26	100.0
Over 1 year	27	37.5	45	62.5	72	100.0
TOTAL	345	54.9	284	45.1	629	100.0

National Police Force Survey. Information missing for 57 cases.

Table 24.4

Interval Taken by Female Victims to Report Offences Involving *Attempted Vaginal Intercourse* to the Police: Charges Laid

Interval Taken to Report Acts of Attempted Vaginal Intercourse by Victims	Charges Against Suspects					
	Not Laid		Laid		Total	
	Number	Per Cent	Number	Per Cent	Number	Per Cent
Immediately	47	57.3	35	42.7	82	100.0
Within 4 hours	15	55.6	12	44.4	27	100.0
Within 8 hours	6	66.7	3	33.3	9	100.0
Within 12 hours	1	25.0	3	75.0	4	100.0
Within 16 hours	1	50.0	1	50.0	2	100.0
Within 24 hours	11	78.6	3	21.4	14	100.0
Within 1-3 days	4	30.8	9	69.2	13	100.0
Within 4-7 days	8	72.7	3	27.3	11	100.0
Under 1 month	13	68.4	6	31.6	19	100.0
Under 6 months	10	43.5	13	56.5	23	100.0
Under 12 months	3	75.0	1	25.0	4	100.0
Over 1 year	7	38.9	11	61.1	18	100.0
TOTAL	126	55.8	100	44.2	226	100.0

National Police Force Survey. Information missing for 24 cases.

Tables 24.5, 24.6, 24.7 and 24.8 pertain to offences involving *acts of anal or attempted anal intercourse with female and male victims*, respectively. In each instance, it is evident that the police decision to charge is largely independent of the time taken to report. For offences involving acts of anal intercourse with females, charges were laid in 23 out of a total of 32 cases (71.9 per cent). For offences involving acts of attempted anal intercourse with females, charges were laid in 24 out of a total of 41 cases (58.5 per cent). For

Table 24.5

Time Taken by Female Victims or by Persons on their Behalf to Report Offences Involving *Anal Intercourse*

Interval Taken to Report Acts of Anal Intercourse	Charges Not Laid		Charges Laid	
	Number (n=9)	Accum. Per Cent	Number (n=23)	Accum. Per Cent
Offences reported within 24 hours	8	88.9	13	56.5
Offences reported within 1 week	1	100.0	3	69.6
Offences reported within 6 months	—	—	3	82.6
Offences reported over 6 months after occurrence	—	—	4	100.0

National Police Force Survey.

Table 24.6

Time Taken by Female Victims or by Persons on their Behalf to Report Offences Involving *Attempted Anal Intercourse*

Interval Taken to Report Acts of Attempted Anal Intercourse	Charges Not Laid		Charges Laid	
	Number (n=17)	Accum. Per Cent	Number (n=24)	Accum. Per Cent
Offences reported within 24 hours	12	70.6	16	66.7
Offences reported within 1 week	1	76.5	2	75.0
Offences reported within 6 months	2	88.2	3	87.5
Offences reported over 6 months after occurrence	2	100.0	3	100.0

National Police Force Survey.

offences involving acts of anal intercourse with males, charges were laid in 35 out of a total of 55 cases (63.6 per cent). Although the number of cases in this category is small, it should be noted that the proportion of suspects charged with an offence involving anal intercourse with a young male (63.6 per cent) is considerably higher than that for all offences against young male victims (44.2 per cent). For offences involving acts of attempted anal intercourse with males, charges were laid in 16 out of a total of 39 cases (41.0 per cent).

Table 24.7

Time Taken by Male Victims or by Persons on their Behalf to Report Offences Involving *Anal Intercourse*

Interval Taken to Report Acts of Anal Intercourse	Charges Not Laid		Charges Laid	
	Number (n=20)	Accum. Per Cent	Number (n=35)	Accum. Per Cent
Offences reported within 24 hours	8	40.0	14	40.0
Offences reported within 1 week	4	60.0	7	60.0
Offences reported within 6 months	8	100.0	12	94.3
Offences reported over 6 months after occurrence	—	—	2	100.0

National Police Force Survey.

Table 24.8

Time Taken by Male Victims or by Persons on their Behalf to Report Offences Involving *Attempted Anal Intercourse*

Interval Taken to Report Acts of Attempted Anal Intercourse	Charges Not Laid		Charges Laid	
	Number (n=23)	Accum. Per Cent	Number (n=16)	Accum. Per Cent
Offences reported within 24 hours	16	69.6	7	43.8
Offences reported within 1 week	4	87.0	3	62.5
Offences reported within 6 months	3	100.0	3	81.3
Offences reported over 6 months after occurrence	—	—	3	100.0

National Police Force Survey.

The findings indicate that the time taken by a young victim of an alleged sexual abuse or by someone on the victim's behalf to report the offence to the police is not a critical factor in the police decision to lay a criminal charge. One can also infer that, at least from the police perspective, the likelihood that a young victim is making a true allegation is not a function of the promptness with which the incident is reported to the police. The findings strongly support the view that no particular inferences concerning the victim's credibility should be drawn merely because the victim did not complain "at the first reasonable opportunity".

In view of the significant proportion of cases in which criminal charges were laid, notwithstanding that a month or more had elapsed since the date of the offence, it is evident that the police are mindful of the considerations which may prevent prompt reporting of these incidents. These findings support the Committee's recommendation given in Part III of the Report that the evidentiary rules concerning the doctrine of "recent complaint" in prosecutions for sexual offences be abrogated by statute.

Identity of Persons Contacting the Police

Due to the youth of some sexual victims, and for a variety of other reasons, the police will often be notified of the offence by someone other than the victim. The identity of the persons who reported these sexual offences against young persons to the police is presented in Tables 24.9 and 24.10. A caveat needs to be entered concerning these findings. In police terminology, the "complainant" is the person who reports an alleged offence to the police, and this will often be a person other than the victim of the offence. Some Canadian police forces, however, appear to have adopted the practice of designating on the police occurrence form the victim as the complainant in all cases, even though the body of the police report clearly indicates that someone other than the victim actually notified the police. Where this occurred, the person who notified the police was specified as the complainant for the purposes of the Committee's research.

In a large number of cases, the victim was listed as the complainant on the police occurrence form but the investigating officer gave no indication concerning who actually called the police. Although each general occurrence form used by the police forces of each city in the Committee's survey contained the category "complainant", there often was uncertainty in this regard in relation to the information provided by the investigating police officer. The implication of this reporting practice, to the extent that it occurs, is that the number of victims designated as "complainants" in the police sense, and the corresponding percentage of victims listed as "complainants" in the police sense, are inflated figures. This is particularly so in relation to reported offences against younger children.

Table 24.9

Identity of Persons Contacting the Police in Relation to Sexual Offences against *Female* Children and Youths: By Age of Victims

Age of Female Victims	Persons Contacting the Police											
	Victim		Parent		Medical/Health Worker		Child Protection Service		Other Persons		Total	
	Number	Per Cent	Number	Per Cent	Number	Per Cent	Number	Per Cent	Number	Per Cent	Number	Per Cent
Under age 7	67	14.2	317	67.3	9	1.9	26	5.5	52	11.0	471	99.9*
7 – 11 years	165	22.8	389	53.9	6	0.8	38	5.3	124	17.2	722	100.0
12 – 13 years	193	40.7	163	34.4	2	0.4	26	5.5	90	19.0	474	100.0
14 – 15 years	421	56.8	152	20.5	2	0.3	47	6.3	119	16.1	741	100.0
16 – 17 years	275	67.6	54	13.3	5	1.2	11	2.7	62	15.2	407	100.0
18 – 20 years	389	81.2	15	3.1	1	0.2	4	0.8	70	14.6	479	99.9*
TOTAL	1,510	45.8	1,090	33.1	25	0.8	152	4.6	517	15.7	3,294	100.0

National Police Force Survey. Information missing for 77 cases.

*rounding error

Table 24.10

Identity of Persons Contacting the Police in Relation to Sexual Offences against *Male* Children and Youths: By Age of Victims

Age of Male Victims	Persons Contacting the Police											
	Victim		Parent		Medical/Health Worker		Child Protection Service		Other Persons		Total	
	Number	Per Cent	Number	Per Cent	Number	Per Cent	Number	Per Cent	Number	Per Cent	Number	Per Cent
Under age 7	26	12.8	157	77.3	1	0.5	8	3.9	11	5.4	203	99.9*
7 – 11 years	77	28.5	142	52.6	—	—	11	4.1	40	14.8	270	100.0
12 – 13 years	30	30.3	42	42.4	—	—	5	5.1	22	22.2	99	100.0
14 – 15 years	70	60.3	27	23.3	—	—	4	3.5	15	12.9	116	100.0
16 – 17 years	21	80.8	1	3.9	—	—	—	—	4	15.3	26	100.0
18 – 20 years	20	76.9	1	3.9	—	—	1	3.9	4	15.3	26	100.0
TOTAL	244	33.0	370	50.0	1	0.1	29	3.9	96	13.0	740	100.0

National Police Force Survey. Information missing for 32 cases.

*rounding error

Overall, about four in five sexual offences against young females were reported to the police either by the victim herself (45.8 per cent) or by her parents (33.1 per cent). Child protection services accounted for about one in 22 police referrals (4.6 per cent), while referrals from medical or health workers constituted about one in 132 (0.8 per cent). Other persons accounted for 15.7 per cent of referrals to the police.

Predictably, the likelihood that female victims themselves reported the offence to the police increased progressively with older victims. On the other hand, these offences came to the knowledge of the police through the agency of the victim's parents more often where the victim was a young child. That police referrals by child protection services decreased markedly with female victims 16 and older is noteworthy. This is partly a function of the legal mandate of these services, which does not extend to young persons over a certain age; in Ontario, for example, this age is 16.

As with female victims, about four in five sexual offences against young males were reported to the police either by the victim himself or by the victim's parents (83.0 per cent). Even so, a smaller proportion of male victims than female victims themselves reported the offence (33.0 versus 45.8 per cent), and, correspondingly, a larger proportion of male victims' parents than female victims' parents brought the offence to police attention (50.0 versus 33.1 per cent). Child protection services accounted for about one in 25 police referrals (3.9 per cent), while referrals from medical or health workers constituted only one in 1,000 (0.1 per cent). Other persons accounted for 13.0 per cent of referrals to the police. The age trends in reporting with respect to male victims are comparable to those observed for female victims. The likelihood that male victims themselves reported the offence to the police increased with older victims; correspondingly, the parents of male victims accounted for progressively fewer police referrals concerning older victims.

At least with respect to pre-adolescent victims, it is evident on the basis of these findings that sexual offences against them were brought to police attention predominantly by persons other than the victims themselves. These children either made statements to someone concerning the offence or acted in a manner that aroused someone's suspicions, both of which resulted in the police being notified.

Under the current rules of evidence, however, many of these statements by child sexual victims would constitute hearsay and would be inadmissible in court. Moreover, under current legal doctrine, a large proportion of these young sexual victims would likely be deemed incompetent to testify, notwithstanding that their "allegations" are considered to be legitimate by the police. These findings strongly underscore the need for reform of the legal rules concerning the testimonial competency of children and the admissibility of hearsay statements along the lines recommended by the Committee in Part III of the Report.

"Founded" Occurrences

An occurrence investigated by the police is considered to be *founded* if the investigation indicates that the offence did occur, and *unfounded* if the investigation indicates that the offence did not occur. The founded-unfounded distinction is an internal police evaluation based on the results of its investigation. Whether or not charges are laid, however, depends on considerations relating

Table 24.11

Reports of Sexual Offences against *Female* Victims Listed by the Police as Founded Occurrences: By Age of Victim

Age of Female Victims	Offences Listed as Founded Occurrences					
	Unfounded		Founded		Total	
	Number	Per Cent	Number	Per Cent	Number	Per Cent
Under age 7	26	5.5	443	94.5	469	100.0
7 – 11 years	28	3.9	689	96.1	717	100.0
12 – 13 years	33	7.0	439	93.0	472	100.0
14 – 15 years	66	9.0	670	91.0	736	100.0
16 – 17 years	66	16.3	339	83.7	405	100.0
18 – 20 years	55	11.5	423	88.5	478	100.0
TOTAL	274	8.4	3,003	91.6	3,277	100.0

National Police Force Survey. Information missing for 94 cases.

Table 24.12

Reports of Sexual Offences against *Male* Victims Listed by the Police as Founded Occurrences: By Age of Victims

Age of Male Victims	Offences Listed as Founded Occurrences					
	Unfounded		Founded		Total	
	Number	Per Cent	Number	Per Cent	Number	Per Cent
Under age 7	15	7.4	187	92.6	202	100.0
7 – 11 years	9	3.4	258	96.6	267	100.0
12 – 13 years	5	5.1	94	94.9	99	100.0
14 – 15 years	3	2.6	113	97.4	116	100.0
16 – 17 years	3	11.1	24	88.9	27	100.0
18 – 20 years	1	3.8	25	96.2	26	100.0
TOTAL	36	4.9	701	95.1	737	100.0

National Police Force Survey. Information missing for 35 cases.

to the likelihood of securing a conviction in court. For example, the police may consider that an occurrence involving a sexual offence against a child was "founded" in the sense that they believed the event happened, but they may not lay charges because: the suspect cannot be found; the child victim (and principal Crown witness) will likely be deemed incompetent to testify at trial; there is no corroboration; the victim is unwilling to testify to the event; the victim's parents are unwilling to subject their child to the trauma of the trial process; or for other reasons. The reasons why charges were not laid by the police are considered following the review of founded and unfounded occurrences.

For both sexes and for victims of sexual assaults of all ages up to 20, 92.3 per cent of all occurrences were considered to be "founded" by the police. Conversely, only 7.7 per cent, or about one in every 13 occurrences, were listed as "unfounded".

Sex of Victim	Percentage of Occurrences Unfounded	Percentage of Occurrences Founded
Females	8.4	91.6
Males	4.9	95.1

With respect to female victims, there is a slight but statistically insignificant trend with age; the proportion of founded occurrences bottoms out in the 16-17 year category, and then rises again. Even so, the critical finding is that well over nine in 10 reported occurrences involving young female victims were considered to be "founded". With respect to male victims, there is no significant variation in the proportion of founded occurrences depending on the ages of victims.

These findings are significant in light of the traditional legal assumptions about the testimonial trustworthiness of young sexual victims. As noted, 92.3 per cent of all occurrences were considered to be "founded" by the police, and the trends with age were statistically insignificant. The findings with respect to children under age 14 are especially salient; the proportion of "founded" occurrences is in the 95 per cent range for victims of both sexes. It is evident that the police not only believed that the vast majority of reported incidents had actually occurred, but also that their assessments in this regard were largely independent of the age of the young sexual victim. Further, the alleged danger of false allegations being made by persons on behalf of very young children is not borne out. The findings provide strong support for the reforms to children's evidence and hearsay recommended by the Committee in Part III of this Report.

Charges Laid

That an occurrence is considered "founded" does not necessarily mean that criminal charges will be laid. For victims of both sexes and of all ages in the survey, charges were laid in about two in five incidents (40.3 per cent).

Table 24.13

Charges Laid by the Police against Suspects in Relation to Sexual Offences Committed against *Female* Victims: By Age of Victims

Age of Female Victims	Charges Laid Against Suspects					
	Not Laid		Laid		Total	
	Number	Per Cent	Number	Per Cent	Number	Per Cent
Under age 7	294	63.9	166	36.1	460	100.0
7 – 11 years	410	57.6	302	42.4	712	100.0
12 – 13 years	257	54.7	213	45.3	470	100.0
14 – 15 years	443	60.5	289	39.5	732	100.0
16 – 17 years	260	64.4	144	35.6	404	100.0
18 – 20 years	318	67.2	155	32.8	473	100.0
TOTAL	1,982	61.0	1,269	39.0	3,251	100.0

National Police Force Survey. Information missing for 120 cases.

Table 24.14

Charges Laid by the Police against Suspects in Relation to Sexual Offences Committed against *Male* Victims: By Age of Victims

Age of Male Victims	Charges Laid Against Suspects					
	Not Laid		Laid		Total	
	Number	Per Cent	Number	Per Cent	Number	Per Cent
Under age 7	143	71.5	57	28.5	200	100.0
7 – 11 years	134	51.0	129	49.0	263	100.0
12 – 13 years	47	48.4	50	51.6	97	100.0
14 – 15 years	39	34.5	74	65.5	113	100.0
16 – 17 years	13	52.0	12	48.0	25	100.0
18 – 20 years	17	65.4	9	34.6	26	100.0
TOTAL	393	54.3	331	45.7	724	100.0

National Police Force Survey. Information missing for 48 cases.

Whether charges were laid against a suspect did not vary appreciably with the sex of the victim. The proportion of charges laid peaks in the 12-13 age group for girls (45.3 per cent) and in the 14-15 age group for boys (65.5 per cent).

Sex of Victim	Percentage of Charges Not Laid	Percentage of Charges Laid
Females	61.0	39.0
Males	54.3	45.7
Average	59.7	40.3

What is striking about these findings is that the proportion of charges laid in occurrences relating to both male and female victims under 16 is greater than that for victims in the 16-20 category. The police were no more reluctant to act on the allegations of young children than they were on the allegations of older teenagers; if anything, the reverse is true. To the extent that the police decision to charge is contingent on the assessment that the victim's allegation is true, these findings belie the notion that the credibility of child sexual victims is appreciably less than that of older sexual victims. These findings furnish support for the reforms to the evidentiary rules concerning young children and hearsay recommended in Part III of this Report.

Reasons Why Charges Were Not Laid

The findings given in Tables 24.15 and 24.16 list the principal reasons why criminal charges were not laid, broken down by the sex and age of the victim. In many instances, no charge was laid for a variety of reasons; each reason was noted in collecting this information from police records. Consequently, the number of "reasons charges not laid" greatly exceeds the total number of cases in which charges were not laid. Further, it was impossible to determine from the police records the relative weight that each of several reasons given may have contributed to the decision not to charge. Although each contributing factor was noted, no inferences were made concerning the relative importance of that factor in the police's decision not to lay a charge. Some factors, of course, would naturally be of controlling importance, for example, where the identity of the suspect was unknown.

The findings with respect to male and female victims, considered together, indicate that:

- In about one in three cases (males, 30.8 per cent; females, 33.8 per cent), charges were not laid because the identity of the suspect was unknown.
- In about one in five cases (males, 21.4 per cent; females, 17.3 per cent), there was no physical evidence (for example, no presence of semen after an alleged rape) was a contributing factor in no charge being laid.
- In about one in five cases (males, 26.2 per cent; females, 17.7 per cent), there was no corroboration of the victim's story (for example, a complete denial by the suspect coupled by a lack of other witnesses) was a contributing factor in no charge being laid.
- In about one in six cases (males, 18.8 per cent; females, 13.7 per cent), the intervention of a social service agency (and, in some cases, the institution of child protection proceedings) was a contributing factor in no criminal charge being laid.

Table 24.15

Reasons that Charges Were Not Laid by Age of *Female* Victims

Reasons Charges Not Laid	Age of Female Victims													
	Under Age 7 (n=294)		7 – 11 (n=419)		12 – 13 (n=257)		14 – 15 (n=443)		16 – 17 (n=260)		18 – 20 (n=318)		TOTAL (n=1982)	
	Non Accumulative Per Cent													
	No.	%	No.	%	No.	%	No.	%	No.	%	No.	%	No.	%
Identity of suspect unknown	65	22.1	132	32.2	71	27.6	135	30.5	129	49.6	138	43.4	670	33.8
Age of child	112	38.1	52	12.7	11	4.3	4	0.9	4	1.5	2	0.6	185	9.3
Lack of physical evidence	79	26.9	80	19.5	45	17.5	82	18.5	40	15.4	17	5.3	343	17.3
Lack of corroboration	93	31.6	79	19.3	43	16.7	86	19.4	34	13.1	16	5.0	351	17.7
Credibility of victim questioned	13	4.4	35	8.5	45	17.5	86	19.4	69	26.5	44	13.8	292	14.7
Credibility of witness questioned	3	1.0	6	1.5	5	1.9	11	2.5	4	1.5	1	0.3	30	1.5
Victim unwilling to testify	8	2.7	18	4.4	34	13.2	86	19.4	55	21.2	49	15.4	250	12.6
Witness unwilling to testify	3	1.0	1	0.2	3	1.2	3	0.7	2	0.8	3	0.9	15	0.8
Offender's spouse unwilling to testify	1	0.3	3	0.7	7	2.7	8	1.8	1	0.4	1	0.3	21	1.1
Parents unwilling to lay charges	11	3.7	11	2.7	14	5.4	16	3.6	2	0.8	1	0.3	55	2.7
Details of offence vague	24	8.2	39	9.5	30	11.7	60	13.5	48	18.5	20	6.3	221	11.2
Social service agency intervention	63	21.4	64	15.6	42	16.3	70	15.8	22	8.5	11	3.5	272	13.7
Suspect cautioned by police	94	32.0	119	29.0	78	30.4	93	21.0	23	8.8	10	3.1	417	21.0

National Police Force Survey.

Table 24.16

Reasons that Charges Were Not Laid by Age of *Male* Victims

Reasons Charges Not Laid	Age of Male Victims													
	Under Age 7 (n=143)		7 – 11 (n=134)		12 – 13 (n=47)		14 – 15 (n=39)		16 – 17 (n=13)		18 – 20 (n=17)		Total (n=393)	
	Non Accumulative Per Cent													
	No.	%	No.	%	No.	%	No.	%	No.	%	No.	%	No.	%
Identity of suspect unknown	29	20.3	54	40.3	12	25.5	15	38.5	5	38.5	6	35.3	121	30.8
Age of child	52	36.4	11	8.2	1	2.1	—	—	—	—	1	5.9	65	16.5
Lack of physical evidence	40	28.0	27	20.1	7	14.9	4	10.3	2	15.4	4	23.5	84	21.4
Lack of corroboration	40	28.0	31	23.1	14	29.8	10	25.6	4	30.8	4	23.5	103	26.2
Credibility of victim questioned	12	8.4	10	7.5	7	14.9	8	20.5	3	23.1	4	23.5	44	11.2
Credibility of witness questioned	2	1.4	1	0.8	—	—	1	2.6	1	7.7	1	5.9	6	1.5
Victim unwilling to testify	3	2.1	4	3.0	3	6.4	4	10.3	3	23.1	5	29.4	22	5.6
Witness unwilling to testify	1	0.7	—	—	1	2.1	1	2.6	—	—	—	—	3	0.8
Offender's spouse unwilling to testify	1	0.7	—	—	1	2.1	—	—	—	—	—	—	2	0.5
Parents unwilling to lay charges	4	2.8	1	0.8	3	6.4	—	—	—	—	—	—	8	2.0
Details of offence vague	13	9.1	10	7.5	5	10.6	4	10.3	2	15.4	1	5.9	35	8.9
Social service agency intervention	31	21.7	26	19.4	11	23.4	3	7.7	2	15.4	1	5.9	74	18.8
Suspect cautioned by police	44	30.8	33	24.6	11	23.4	7	17.9	3	23.1	2	11.8	100	25.4

National Police Force Survey.

- In one in four cases concerning male victims (25.4 per cent) and in more than one in five cases concerning female victims (21.0 per cent), the suspect was cautioned but not charged.

Identity of Suspect Unknown

The proportion of cases in which the identity of the offender was unknown increases with the victims' ages. This trend is particularly apparent with respect to female victims. The findings suggest that young children were more apt either to know the identity of their assailants or to disclose this information than were older children and teenagers.

Age of Child

The results here are predictable. Children under the age of seven, generally speaking, would likely be held incompetent to give even unsworn testimony at trial. It is therefore not surprising that the "age of child" constituted the main reason cited in police decisions not to charge in cases where the victim was under seven years of age, irrespective of the sex of the victim. In the absence of a confession by the offender or other strong confirmatory evidence, prosecutions of offenders who sexually assault very young children are often pointless. The findings indicate that the police are aware of these practical realities and, instead of charging suspected offenders, use the expedient of a caution proportionately more often in cases in which the victim is very young.

The importance of the child's age as a factor influencing the decision not to charge drops off sharply for victims who are 12 years-old and older. Children of these ages would normally be held competent to testify under current legal doctrine.

Lack of Corroboration

These findings are significant especially with respect to male and female victims 14-20 years of age. It would appear that, at least in some instances, the police did not charge for reasons of "lack of corroboration", even where the suspect could have been charged with an offence for which corroboration was not required by law, for example, rape and indecent assault on a female. The offence-specific findings concerning "lack of corroboration" are presented later in this chapter.

Credibility of Victim Questioned

These findings are striking when viewed in relation to the ages of victims. At least as far as the police are concerned, the credibility of young sexual victims decreased with age, irrespective of the sex of the victim. It strongly

appears that sexual victims of both sexes under the age of 12 were considered more credible than older sexual victims, and that victims 16-20 were perceived to be the least credible.

These findings refute the assumption that the allegations of young sexual victims are intrinsically less trustworthy than those of older victims, and argue against the need for special corroboration requirements where young children are concerned. The findings also provide empirical support for the reforms to children's evidence and hearsay recommended in Part III of this Report.

Credibility of Witness Questioned

This reason came up too seldom to indicate a trend. The Committee's findings indicate that only rarely in cases investigated by the police was there a witness to a sexual assault on a young person.

Victim Unwilling to Testify

This factor becomes progressively more important with older victims. That this reason appears only rarely with respect to young children is not surprising; where the police feel that a child victim will be incompetent to testify, the child's willingness to testify is somewhat academic. The significance of this factor in relation to older victims can perhaps be attributed in part to the victims' reluctance to submit to the criminal trial process.

Parents Unwilling to Lay Charges

This occurred rarely, and was only a factor where the victim was a child or young teenager.

Details of Offences Vague

This reason was a contributing factor in about one in 10 cases and increased in importance with the age of the victims, peaking in the 16-17 year group for both sexes. **That this was a relatively minor factor in cases involving children under 12 is yet another refutation of the assumption that young children are incapable of speaking effectively on their own behalf.** On the other hand, the relative prominence of this factor with respect to older teenagers may be accounted for in part by a reluctance to recount the details of the offence or to identify an offender known to them.

Social Service Agency Intervention

The intervention of a social service agency was a factor in the police not laying criminal charges mainly with respect to children under 16. Many child

care professionals feel that the institution of "parallel" legal proceedings against an offender (namely, both in criminal court and in child welfare court) is counter-productive, unless the laying of a criminal charge will serve a pragmatic purpose, for example, ensuring that an incestuous father stays away from his daughters.

Suspect Cautioned by Police

The use of informal "cautions" against suspected offenders happened most often where the victim was under 14, and particularly, where the victim was under seven years of age. As noted, in the absence of a confession by the offender or other strong confirmatory evidence, prosecutions of offenders who sexually assault very young children are often futile. It would appear that the police are aware of these practical realities, and caution suspected offenders proportionately more often where the child is very young. On the other hand, the use of cautions in cases of older victims may in part be attributable to discretionary decisions by police officers that a criminal charge would not be appropriate in the circumstances (for example, consensual sex between two 19 year-old males).

Reasons Charges Were Not Laid by Types of Offences

The principal reasons why charges were not laid enables certain inferences to be drawn concerning how police charging practices are influenced by different reasons and in relation to the ages and sexes of the victims. Additional insights can be gained by considering these "reasons not to charge" in light of the different categories of sexual offences which the police are called upon to investigate. As noted, that a police occurrence form specifies, for example, "rape" as the most appropriate charge in the circumstances does not mean that the suspect could be successfully convicted of rape at trial. Even so, to the extent that the type of offence indicated on the police occurrence form requires certain key elements to be proven, the following findings are useful in considering how the police decision not to lay a charge may be influenced by the nature of the offence being investigated.

In Table 24.17, the number of "reasons charges not laid" exceeds the total number of cases in which charges were not laid. The percentages reported are based on the total number of instances a given reason was reported with respect to a specified offence, relative to the total number of cases involving that reported offence in which charges were not laid. Since more than one reason was often cited in investigations relating to a particular offence the total percentages under each offence exceed 100.0 per cent. A case in which no charges were laid is hereinafter called an "uncharged case".

Table 24.17

Reasons that Police Charges Were Not Laid by Type of Offence

Reasons Charges Not Laid	Rape (n=219)	Attempted Rape (n=53)	Female Under Age 14 (n=34)	Female Age 14 But Under 16 (n=54)	Indecent Assault Female (n=1464)	Indecent Assault Male (n=360)	Gross Indecency (n=83)	Buggery (n=16)	Incest (n=45)	Sex. Int. Step-Daughter Etc. (n=2)	Sexual Int. With Feeble-Minded (n=3)	Contributing to/ J.D.A. (n=18)	Average For 12 Offences (n=2,351)
	Non Accumulative Per Cent												
Identity of suspect unknown	31.1	62.3	8.8	3.7	37.7	31.4	37.3	18.8	—	—	66.7	11.1	34.4
Age of child	0.9	1.9	11.8	1.9	4.8	6.7	15.7	—	4.4	—	—	—	10.9
Lack of physical evidence	27.9	9.4	29.4	13.0	16.5	21.7	24.1	25.0	35.6	—	33.3	16.7	19.0
Lack of corroboration	21.0	18.9	32.4	7.4	17.4	25.8	30.1	25.0	37.8	100.0	33.3	5.6	19.9
Credibility of victim questioned	47.0	17.0	17.6	14.8	10.7	10.8	10.8	31.3	20.0	—	33.3	11.1	14.8
Credibility of witness questioned	1.8	1.9	5.9	1.9	1.5	1.4	6.0	6.3	4.4	—	—	—	1.8
Victim unwilling to testify	28.3	9.4	29.4	44.4	9.2	5.8	6.0	—	33.3	—	—	11.1	11.9
Witness unwilling to testify	0.9	—	2.9	—	0.6	0.8	2.4	—	2.2	—	—	—	0.8
Spouse unwilling to testify	—	—	—	—	1.2	0.6	3.6	—	6.7	—	—	—	1.1
Parents unwilling to lay charges	1.8	—	8.8	5.6	2.7	2.2	7.2	6.3	4.4	—	—	5.6	2.9
Details of offence vague	27.9	13.2	17.6	5.6	9.2	7.5	9.6	18.8	24.4	—	33.3	5.6	11.2
Complainants parents indifferent to laying charges	4.6	3.8	2.9	13.0	5.7	6.7	6.0	6.3	—	—	—	5.6	5.7
Social service agency intervention	5.5	3.8	5.9	7.4	14.1	18.9	19.3	18.8	60.0	100.0	66.7	16.7	14.8
Suspect cautioned by police	3.7	—	38.2	35.2	25.1	25.8	15.7	43.8	15.5	—	—	22.2	22.6

National Police Force Survey. Information missing for 24 cases.

Identity of Suspect Unknown

The highest proportion of uncharged cases in which it was reported that the suspect's identity was unknown concerned the offence of attempted rape (62.3 per cent); this reason was reported in about one in three uncharged cases of rape, indecent assault on a female, indecent assault on a male and gross indecency. These five offences accounted for 98.6 per cent of the uncharged cases in which it was reported that the suspect's identity was unknown. That this reason was progressively more prominent with respect to older victims is illustrated in Table 24.18.

Table 24.18

Reasons that Police Charges Were Not Laid by Age of Complainant: *Suspect Unknown*

Age of Complainant	Type of Offence				
	Rape (n=68)	Attempted Rape (n=33)	Indecent Assault Female (n=552)	Indecent Assault Male (n=113)	Gross Indecency (n=31)
	Per Cent	Per Cent	Per Cent	Per Cent	Per Cent
Under age 7	—	—	22.5	19.7	26.1
7 – 11 years	33.3	50.0	32.7	41.4	40.7
12 – 13 years	33.3	60.0	38.9	26.2	14.3
14 – 15 years	29.9	55.6	36.4	38.2	57.1
16 – 17 years	35.4	60.0	56.2	41.7	57.1
18 – 20 years	27.7	83.3	74.5	41.7	80.0
TOTAL	31.1	62.3	37.7	31.4	37.3

National Police Force Survey. Non-accumulative totals based on the proportion of cases in which the suspect was unknown to the number of charges not laid for each offence and by age group. The five offences listed account for 98.6 per cent of the cases in which charges were not laid because the identity of the suspect was unknown.

This tendency is remarkable, especially in relation to the offences of indecent assault on a female and indecent assault on a male. The identity of the suspect was reported to have been unknown in only about one in five of the uncharged cases of indecent assault female (22.5 per cent) and indecent assault male (19.7 per cent) concerning victims under seven years of age. The importance of this factor increased progressively with older victims: the identity of the suspect was reported to have been unknown in three in four of the uncharged cases of indecent assault female (74.5 per cent) and in more than two in five of the uncharged cases of indecent assault male (41.7 per cent) concerning victims in the 18-20 age group. These findings strongly suggest that older children and teenagers are less apt either to know the suspect's identity or to disclose the suspect's identity, than are younger children.

Age of Child

The offences of indecent assault on a female, indecent assault on a male, and gross indecency accounted for 96.1 per cent of the uncharged cases where the age of the child was given as a reason why charges were not laid. For reasons discussed earlier, the findings given in Table 24.19 indicate that this factor was, predictably, more important in cases involving victims under the age of 12.

Table 24.19

Reasons that Police Charges Were Not Laid by Age of Complainant: *Age of Child*

Age of Complainant	Type of Offence		
	Indecent Assault Female (n=171)	Indecent Assault Male (n=62)	Gross Indecency (n=13)
	Non Accumulative Per Cent		
Under age 7	38.4	37.9	30.4
7 – 11 years	12.9	7.8	22.2
12 – 13 years	4.7	2.4	—
14 – 15 years	1.0	—	—
16 – 17 years	1.2	—	—
18 – 20 years	1.4	3	—
TOTAL	4.8	6.7	15.7

National Police Force Survey. Non-accumulative totals based on the proportion of reports citing the age of the child to the number of charges not laid for each offence and by age group. The three offences listed accounted for 96.1 per cent of cases where the age of the child was given as a reason why charges were not laid. The 10 other instances in which the age of the child was reported as a reason for not laying charges were: rape (2); attempted rape (1); sexual intercourse with a female under 14 (4); sexual intercourse with a female 14 or 15 (1); and incest (2).

Lack of Physical Evidence

The seven offences listed in Table 24.20 account for 97.1 per cent of the uncharged cases in which lack of physical evidence was cited as a reason why charges were not laid. In general, this reason becomes less prominent with older victims. This finding is not surprising in light of the fact that the law presumes older persons to be more trustworthy than young children and, correspondingly, the need for independent evidence is most compelling where the victim is a young child.

Table 24.20

Reasons that Police Charges Were Not Laid by Age of Complainant: *Lack of Physical Evidence*

Age of Complainant	Type of Offence						
	Rape (n=61)	Sexual Int. With Female Under 14 (n=10)	Sexual Int. With Female 14 or 15 (n=7)	Indecent Assault Female (n=241)	Indecent Assault Male (n=78)	Gross Indecency (n=20)	Incest (n=16)
	Non Accumulative Per Cent						
Under age 7	—	83.3	—	25.4	28.8	39.1	—
7 – 11 years	22.2	16.7	—	7.0	20.3	25.9	44.4
12 – 13 years	41.7	18.1	—	15.2	14.3	14.3	33.3
14 – 15 years	28.4	—	13.0	17.0	8.8	14.3	30.0
16 – 17 years	33.8	—	—	8.9	8.3	14.3	50.0
18 – 20 years	20.0	—	—	1.4	8.3	—	—
TOTAL	27.9	29.4	13.0	16.5	21.7	24.1	35.6

National Police Force Survey. Non-accumulative totals based on the proportion of reports of lack of physical evidence to the number of charges not laid and by age group. The seven offences listed accounted for 97.1 per cent of the cases in which lack of evidence was cited as a reason charges were not laid.

Lack of Corroboration

The seven offences listed in Table 24.21 accounted for 97.4 per cent of the uncharged cases in which lack of corroboration was cited as a reason why charges were not laid. The prominence of this reason in cases where the victim was under age 14 can be explained by the fact that the evidence of an unsworn child is required by statute to be corroborated, and that even the evidence of a young child who is sworn as a witness is subject to the common law "corroboration warning rule". Further, when these findings were collected, a mandatory corroboration requirement applied to the offence of incest. The findings indicate that the police were aware of these legal requirements, and tended to "screen out" cases which, due to lack of corroboration of the complainant's story, would be pointless to bring to trial.

What is surprising, however, is the extent to which "lack of corroboration" was a factor in non-charging with respect to victims in the 14-20 age category. With the exception of incest, none of the offences listed in Table 24.21 required corroboration as a matter of law. These findings can be interpreted in at least three different ways. Either the police are uninformed about when corroboration is required as a strict matter of law, or they make assessments that, without some kind of confirmatory evidence the likelihood of securing a conviction in the particular circumstances is slender. Alternatively, the lack of corroboration may have been the decisive factor where the complainant's credibility is otherwise doubted. Each of these considerations, or some combination of them and others, may have operated in any particular case.

Complainant's Credibility Questioned

That the complainant's credibility was questioned in almost half (47.0 per cent) of the uncharged rape cases is the most significant of the findings given in Table 24.22. The findings suggest that in a significant proportion of cases the police seem to be sceptical about the veracity of all purported rape victims, whether children, young teenagers or older teenagers. Apart from the uncharged rape cases, the general trend is that the police are more doubtful of the veracity of older as opposed to younger sexual victims. This trend has been previously noted.

Complainant Unwilling to Testify

This reason for not laying charges listed in Table 24.23 was most conspicuous in relation to the uncharged cases of rape, sexual intercourse with a female under 14, females 14 or 15, and incest. When viewed in relation to the victims' ages, it becomes apparent that the prospect of testifying is a greater inhibiting factor where the victim is older. It is unknown why almost half (44.4 per cent) of the 24 uncharged cases of sexual intercourse with girls 14 or 15 cited the reason that the complainant was unwilling to testify. The section

Table 24.21

Reasons that Police Charges Were Not Laid by Age of Complainant: *Lack of Corroboration*

Age of Complainant	Type of Offence						
	Rape (n=46)	Attempted Rape (n=10)	Sexual Int. With Female Under Age 14 (n=11)	Indecent Assault Female (n=255)	Indecent Assault Male (n=93)	Gross Indecency (n=25)	Incest (n=17)
	Non Accumulative Per Cent						
Under age 7	—	25.0	66.7	30.4	29.5	26.1	100.0
7 – 11 years	11.1	—	16.7	18.5	21.9	29.6	55.6
12 – 13 years	16.7	20.0	27.2	15.6	28.6	35.7	33.3
14 – 15 years	29.9	33.3	—	17.3	23.5	28.6	25.0
16 – 17 years	20.0	13.3	—	8.9	25.0	42.9	50.0
18 – 20 years	15.4	16.7	—	2.1	25.0	20.0	—
TOTAL	21.0	18.9	32.4	17.4	25.8	30.1	37.8

National Police Force Survey. Non-accumulative totals based on the proportion of reports of lack of corroboration to the number of charges not laid and by age group. The seven offences listed accounted for 97.4 per cent of the cases in which lack of corroboration was cited as a reason charges were not laid.

Table 24.22

Reasons that Police Charges Were Not Laid by Age of Complainant: *Complainant's Credibility Questioned*

Age of Complainant	Type of Offence								
	Rape (n=103)	Attempted Rape (n=9)	Sexual Int. With Female Under 14 (n=6)	Sexual Int. With Female 14 or 15 (n=8)	Indecent Assault Female (n=157)	Indecent Assault Male (n=39)	Gross Indecency (n=9)	Buggery (n=5)	Incest (n=9)
	Non Accumulative Per Cent								
Under age 7	—	—	16.7	—	4.3	9.1	—	—	—
7 – 11 years	44.4	—	—	—	7.8	7.8	3.7	—	22.2
12 – 13 years	50.0	40.0	29.4	—	14.2	14.3	28.6	—	33.3
14 – 15 years	40.3	11.1	—	14.8	15.6	17.6	28.6	75.0	15.0
16 – 17 years	53.8	33.3	—	—	16.6	16.7	14.3	100.0	25.0
18 – 20 years	47.7	5.6	—	—	8.5	25.0	20.0	100.0	—
TOTAL	47.0	17.0	17.6	14.8	10.7	10.8	10.8	31.3	20.0

National Police Force Survey. Non-accumulative totals based on the proportion of reports of the complainant's credibility being questioned to the number of charges not laid and by age group. The nine offences listed accounted for 99.1 per cent of the cases in which the complainant's credibility was cited as a reason why charges were not laid.

Table 24.23

Reasons that Police Charges Were Not Laid by Age of Complainant: *Complainant Unwilling to Testify*

Age of Complainant	Type of Offence							
	Rape (n=62)	Attempted Rape (n=5)	Sexual Int. With Female Under Age 14 (n=16)	Sexual Int. With Female 14 or 15 (n=24)	Indecent Assault Female (n=135)	Indecent Assault Male (n=21)	Gross Indecency (n=5)	Incest (n=15)
	Non Accumulative Per Cent							
Under age 7	—	—	16.7	—	2.9	2.3	4.3	—
7 – 11 years	—	—	16.7	—	4.0	3.1	—	22.2
12 – 13 years	16.7	—	36.4	—	10.4	7.1	14.3	16.7
14 – 15 years	19.4	—	—	44.4	15.0	11.8	14.2	35.0
16 – 17 years	32.3	13.3	—	—	14.8	25.0	—	62.5
18 – 20 years	40.0	16.7	—	—	14.9	33.3	20.0	—
TOTAL	28.3	9.4	29.4	44.4	9.2	5.8	6.0	33.3

National Police Force Survey. Non-accumulative totals based on the proportion of victims who were unwilling to testify to the number of charges not laid and by age group. The eight offences listed accounted for 99.3 per cent of the cases in which the victim was unwilling to testify.

146(2) offence is one where the complainant's lack of consent need not be proved, but she must be shown to have been "of previously chaste character". Although the number of uncharged incest cases was small, that one in three cited the complainant's unwillingness to testify as a reason why charges were not laid is scarcely surprising, given the painful circumstances inherent in an incest trial.

Spouse of Suspect Unwilling to Testify

This was only a factor in relation to four sexual offences. When the findings were collected, the spouse of an offender charged with indecent assault female or indecent assault male could not be compelled to testify against him; it is not surprising, therefore, that these two offences are virtually not represented in these findings. With respect to the offences of incest and gross indecency, it is probable that, in the uncharged cases in which this reason was cited, the police considered that compelling the offender's spouse to testify against him would do more harm than good. It is also possible that the wife of the offender claimed the "interspousal communications" privilege (considered in Chapter 19, *Evidence of an Accused's Spouse*).

Details of Offence Vague

This reason was cited most often in uncharged cases involving sexual offences to which considerable social stigma attaches: rape (27.9 per cent) and incest (24.4 per cent). A breakdown by ages of victims is presented in Table 24.24. As noted previously, it is apparent from these findings that young children are no more prone to giving vague accounts to the police than are older children.

Social Agency Intervention

That charges were sometimes not laid because of the intervention of a social service agency was particularly notable in cases of incest: in three of five uncharged incest cases (60.0 per cent), no criminal charges were laid against the offender because of an agency's intervention on the child's behalf (Table 24.25). Overall, this reason was a factor in about one in seven uncharged cases (14.8 per cent), and was especially apparent in cases involving victims under the age of 16.

Suspect Cautioned by the Police

The importance of the victim's age in influencing whether the police caution instead of charge is suggested by the findings given in Table 24.26. As noted earlier, the use of informal police "cautions" happened most often where the victim was under 14, and particularly where the victim was under seven years-old. It is evident that the police were aware of the practical realities of

Table 24.24

Reasons that Police Charges Were Not Laid by Age of Complainant: *Details of Offence Vague*

Age of Complainant	Type of Offence								
	Rape (n=61)	Attempted Rape (n=7)	Sexual Int. With Female Under 14 (n=6)	Sexual Int. With Female 14 or 15 (n=3)	Indecent Assault Female (n=135)	Indecent Assault Male (n=27)	Gross Indecency (n=8)	Buggery (n=3)	Incest (n=11)
	Non Accumulative Per Cent								
Under age 7	—	—	50.0	—	8.0	6.8	17.9	—	—
7 – 11 years	33.3	—	16.7	—	8.3	7.8	7.4	—	33.3
12 – 13 years	33.3	20.0	9.1	—	10.9	9.5	7.1	—	16.7
14 – 15 years	22.4	22.2	—	5.6	12.2	5.9	14.2	75.0	20.0
16 – 17 years	36.9	20.0	—	—	11.2	8.3	—	—	37.5
18 – 20 years	23.1	5.6	—	—	2.8	8.3	—	—	—
TOTAL	27.9	13.2	—	5.6	9.2	7.5	9.6	18.8	24.4

National Police Force Survey. Non-accumulative totals based on the proportion of cases in which the details of the offence were vague to the number of charges not laid and by age group. The nine offences listed accounted for 99.2 per cent of the cases in which the details of the offence were listed as being vague.

Table 24.25

Reasons that Police Charges Were Not Laid by Age of Complainant: *Involvement of Agency*

Age of Complainant	Type of Offence						
	Rape (n=12)	Indecent Assault Female (n=207)	Indecent Assault Male (n=68)	Gross Indecency (n=16)	Incest (n=27)	Sexual Int. With Female Under Age 14 (n=2)	Sexual Int. With Feeble-Minded (n=2)
	Non Accumulative Per Cent						
Under age 7	100.0	21.4	22.7	13.0	—	—	—
7 – 11 years	—	13.7	18.8	25.9	67.7	—	—
12 – 13 years	8.3	15.6	23.8	28.6	16.7	—	—
14 – 15 years	6.0	15.0	5.9	28.6	70.0	100.0	—
16 – 17 years	3.1	8.3	8.3	—	62.5	—	66.7
18 – 20 years	6.2	4.3	8.3	—	100.0	—	—
TOTAL	5.5	14.1	18.9	19.3	60.0	100.0	66.7

National Police Force Survey. Non-accumulative totals based on the proportion of cases in which either a child protection agency or other community agency recommended charges not be laid to the total number of cases in which charges were not laid and by age group. The seven offences listed accounted for 96.0 per cent of the cases in which agencies recommended charges not be laid.

Table 24.26

Reasons that Police Charges Were Not Laid by Age of Complainant: *Suspect Cautioned by the Police*

Age of Complainant	Type of Offence								
	Rape (n=8)	Sexual Int. With Female Under 14 (n=13)	Sexual Int. With Female 14 or 15 (n=19)	Indecent Assault Female (n=367)	Indecent Assault Male (n=93)	Gross Indecency (n=13)	Buggery (n=7)	Incest (n=7)	Contributing To Juvenile Delinquency* (n=4)
	Non Accumulative Per Cent								
Under age 7	—	33.3	—	33.0	30.3	30.4	33.3	—	—
7 – 11 years	—	16.7	—	30.8	25.0	7.4	33.3	33.3	—
12 – 13 years	—	45.5	—	32.2	23.8	14.3	50.0	—	100.0
14 – 15 years	4.5	—	35.2	22.8	17.6	14.3	100.0	10.0	37.5
16 – 17 years	3.1	—	—	11.8	25.0	14.3	100.0	12.5	—
18 – 20 years	4.6	—	—	4.3	16.7	—	—	100.0	—
TOTAL	3.7	38.2	35.2	25.1	25.8	15.7	43.8	15.5	22.2

National Police Force Survey. Non-accumulative totals based on the proportion of cases in which the police cautioned the suspected offender to the total number of cases in which charges were not laid by the police and by age group. The listing is inclusive.

* Under *Juvenile Delinquents Act*

successfully prosecuting sexual offenders against young victims, and accordingly, gave "cautions" proportionately more often where the child victim was very young. It is significant, for example, that in about one in three uncharged indecent assault cases (female victims, 33.0 per cent; male victims, 30.3 per cent) where the victim was under seven years of age, the suspect was cautioned but not charged. That the suspect was cautioned but not charged in eight rape cases and seven buggery cases is difficult to account for. With respect to the uncharged incest cases, it is likely that each of the seven suspects who were cautioned but not criminally charged was nonetheless made a party to child protection proceedings instituted on the child's behalf.

Summary

1. Most offences were reported to the police within 24 hours (65.3 per cent); more than three quarters were reported within one week of their occurrence (76.4 per cent). The findings indicate that the time taken by a young victim or someone on the victim's behalf was not a critical factor in the police decision to lay a criminal charge.

2. For pre-adolescent victims, sexual offences against them were brought to police attention predominantly by persons other than the victims themselves. The likelihood that victims themselves reported the offence to the police increased sharply with older victims.

3. Nine in 10 occurrences (92.3 per cent) were considered to be 'founded' by the police; the trends in this regard in relation to the age of the victims were statistically insignificant. For children under 14 years-old, the proportion of 'founded' occurrences was in the 95 per cent range. The findings indicate that the police believed that the vast majority of the reported incidents had actually occurred.

4. Charges were laid in two in five cases (40.3 per cent) investigated by the police. Whether charges were laid did not vary appreciably with the sex of the victim but the proportion of charges laid was greater in cases involving children under age 16 than that for older victims. The police were no more reluctant to act on the allegations of young children than on those of older adolescents.

5. The reasons why charges were not laid varied by the age and sex of the victims and in relation to the types of sexual offences committed. Proportionately more of the younger victims knew the identity of the suspected offender than did older children and adolescents.

6. The 'age of the child' was the main reason cited in decisions not to lay charges in cases in which the victim was under seven years-old.

7. The findings do not support the assumption that younger victims are less credible than older victims. On average, victims under age 12 were considered more credible than adolescents; victims between 16 and 20 years-old were perceived to be the least credible.

8. Proportionately more older victims than younger victims were unwilling to testify.

9. A similar trend occurred in relation to the details of the offences being reported to be too vague to permit the laying of charges. This factor increased with the age of victims.

10. The intervention of a social service agency was a factor in the police not laying charges mainly with respect to children under age 16.

11. The use of informal 'cautions' against suspected offenders occurred most often when the victim was under age 14, and particularly, where the victim was under age seven.

Chapter 25

Elements of the Offences

Drawing upon information obtained in the National Police Force Survey, the findings presented in this chapter provide documentation concerning: the nature of the age disparities between victims and suspected offenders; the listing of sexual offences in relation to the types of sexual acts committed; the use of threats and force against victims; the reactions of victims; and the type of association or relationship between victims and offenders in relation to the ages of the victims and the offences and acts committed against them. The Committee has drawn upon these findings as the basis for a number of its principal recommendations specified in Part III of the Report.

Age Disparities between Victims and Offenders

In light of government proposals to amend the *Criminal Code* provisions relating to sexual offences against young persons, information was collected in the National Police Force Survey on the age disparities between offenders and their victims. For example, **section 246.1(2) of the *Criminal Code* (a provision which came into force in January, 1983) provides that it is a legal defence to a sexual assault charge if a complainant under 14 years of age consents to the sexual activity and the accused is less than three years older than the complainant. This is a new concept in Canadian criminal law. Under the repealed indecent assault offences, the consent of a person under the age of 14 to be touched sexually by another person was not a defence to a charge.**

The notion of "relative closeness in age" as a legal defence for persons who engage in consensual sexual activity with other young persons has also found expression in recent government proposals. For example, in *Bill C-53*, the "less than three years age disparity" defence was proposed for all forms of consensual sexual activity (including sexual intercourse) with persons under 14, or 14 or 15. Similarly, in a *Working Paper* by the federal Department of Justice in 1982 which modified the proposals advanced in *Bill C-53*, the "less than three years age disparity" defence was applied to consensual sexual activity with persons under 14, and a defence of less than five years age disparity was proposed for consensual sexual activity involving persons 14 or 15 years of age.

The justification for these proposals appears to rest upon several implicit social and legal assumptions, namely, that:

- The law, in principle, should accord young persons greater autonomy to engage in consensual sexual acts with their peers, by removing the criminal sanction against the older party.
- Relative closeness in age between the young persons is itself an indication that the sexual acts engaged in are more likely to be genuinely consensual between the parties.
- Consensual sexual activity between young persons who are close in age is, by itself, not harmful to either of the young participants.
- It is not the function of the criminal law to attempt to regulate consensual sexual behaviour between young persons who are close in age.

In order to test the validity of these assumptions, the findings of the National Police Force Survey were reviewed in relation to the nature of the age disparities between victims and offenders and the types of sexual acts which occurred involving young persons who were close in age that came to police attention. A summary of the findings on age disparities between victims and offenders is given in Table 25.1.

Table 25.1

Age Disparity between Suspected Sexual Offenders and Victims

Age of Victim	Age of Offender							
	Younger Than Victim		Less Than 3 Years Older Than Victim		More Than 3 Years Older Than Victim		Total	
	No.	%	No.	%	No.	%	No.	%
Under 7	—	—	12	1.5	790	98.5	802	100.0
7 – 11	5	0.3	38	2.3	1,609	97.4	1,652	100.0
12 – 13	5	0.5	76	7.3	956	92.2	1,037	100.0
14 – 15	17	1.3	132	10.0	1,173	88.7	1,322	100.0
16	14	4.7	38	12.6	249	82.7	301	100.0
17	19	6.7	38	13.5	225	79.8	282	100.0
18	23	8.2	53	18.8	206	73.0	282	100.0
19	24	9.8	47	19.2	173	71.0	244	100.0
20	27	12.9	19	9.1	163	78.0	209	100.0
TOTAL	134	2.2	453	7.4	5,544	90.4	6,131	100.0

National Police Force Survey. Category "less than 3 years older" includes persons less than three years older than the victim, except where victims were 19 years-old and older. Information missing for 72 cases.

Two points should be noted in relation to these findings. First, while information was gathered in the National Police Force Survey for all victims under the age of 16, information on occurrences involving victims between the ages of

16 and 20 was collected from only some police forces. This accounts for the marked drop in the number of the total occurrences involving victims age 16 and older. Second, the category "offender less than 3 years older than victim" only applies with strict accuracy to victims aged 18 or younger. Where the victim was 19, this category refers to offenders 19 or 20; where the victim was 20, this category refers to offenders who were also 20. Equally, the category "offender more than 3 years older than victim" only applies to victims 18 or younger. With respect to victims 19 or 20, this category refers to offenders who were 21 or older; this classification masks to some extent incidents in which the offender was less than three years older than the victim. Accordingly, the findings presented in Table 25.1 are most illustrative in relation to occurrences involving victims 18 or younger.

With respect to occurrences involving victims under the age of 18, three consistent trends are apparent:

1. The proportion of offenders who were younger than their victims increases steadily with the ages of victims, from a low of about one in 300 (0.3 per cent) concerning victims under the age of seven, to a high of about one in 12 (8.2 per cent) concerning victims aged 18. Since the *Young Offenders Act* sets the age of criminal responsibility at age 12, it would appear that there will at least be a small number of very young sexual offenders who will have to be dealt with, if at all, under provincial law.

2. The proportion of offenders who were less than three years older than their victims also increases with the ages of victims. When the category "offender younger than victim" is added to category "offender less than 3 years older than victim", the following results are obtained:

Age of Victim	Offender Younger Than or Less Than 3 Years Older Than Victim	
	Number	Per Cent
Under 7	12	1.5
7 – 11	43	2.6
12 – 13	81	7.8
14 – 15	149	11.3
16	52	17.3
17	57	20.2
18	76	27.0

With respect to victims in the 12-15 age group, it appears that a defence based on an age disparity of less than three years would potentially be applicable to a small proportion of cases. The scope of its application would doubtless be widened where an age disparity of less than five years (as proposed by the federal government's "*Working Paper*") applied.

3. The proportion of offenders who were more than three years older than their victims decreased steadily with the ages of victims, from a high of 98.5 per cent concerning victims under the age of seven, to a low of 73.0 per cent concerning victims aged 18. In relation to occurrences involving victims 18 or younger, 91.7 per cent, or about 11 in 12 cases, involved

offenders who were more than three years older than their victims. This proportion is even higher when only occurrences involving victims under the age of 16 are considered: almost 14 in every 15 cases (93.4 per cent) involved offenders who were more than three years older than their victims. Conversely, only in about one in 15 cases (6.6 per cent) was the offender less than three years older than the victim in occurrences involving victims under the age of 16.

The findings given in Table 25.1 indicate the relative extent to which sexual offenders are close in age to their victims, but they do not shed light on the central issue: Are the sexual acts involving two persons who are relatively close in age and which come to police attention generally less serious in nature than those in which there is a wider disparity in age between the parties? That this is so appears to be a premise of recent legislative proposals that provide a legal defence for the older party where consensual sexual acts occur between young persons less than three or five years apart in age.

Tables 25.2 and 25.3 present findings in relation to the use or non-use of threats or force by offenders in occurrences where the offender was either younger than the victim, less than three years older than the victim, or more than three years older than the victim. Where threats or force were used by an offender, there obviously was no genuine consent on the victim's part. Further, where the victim was 12 years-old or older and no threats or force were used by the offender, this indicates only that there was a possibility that the victim gave a genuine consent. A key determination, then, is whether the non-use of threats or force by offenders and the consequent possibility that victims gave a genuine consent (although the act was legally proscribed on other grounds, for example, sexual intercourse with females under 14, or 14 or 15) varied with the relative ages of offenders and victims. The findings in this regard are presented in Table 25.2.

Table 25.2

The Use of Threats or Force by Disparities in Age between Suspected Offenders and Victims

The Use or Non-use of Threats or Force by Offenders	Offender Younger Than Victim	Offender Less Than 3 Years Older Than Victim	Offender More Than 3 Years Older Than Victim
	Per Cent	Per Cent	Per Cent
Victim threatened	1.0	2.3	3.7
Victim forced	60.8	70.6	56.0
Victim neither threatened nor forced	38.2	27.1	40.3
TOTAL	100.0	100.0	100.0

National Police Force Survey.

Overall, about three in five victims were either threatened or forced to engage in the sexual act or acts with the offender. **What is striking is that, proportionately, offenders who were less than three years older than their victims were appreciably more likely to use threats or force (72.9 per cent) than offenders who were more than three years older than their victims (59.7 per cent). These findings argue strongly against the advisability of introducing a "close in age" exception into the provisions of *Criminal Code* sexual offences.** Only slightly more than one in four (27.1 per cent) occurrences involving persons less than three years apart in age involved no threats or force by the offender, and therefore, the possibility of genuinely consensual sexual interaction was smaller in these instances than in either of the other two categories.

Table 25.3

The Use of Threats or Force by Offenders by Ages of Victims in Relation to Disparities in Age between Suspected Offenders and Victims

Age of Victim	Offender Younger Than Victim		Offender Less Than 3 Years Older Than Victim		Offender More Than 3 Years Older Than Victim	
	Threats or Force	No Threats or Force	Threats or Force	No Threats or Force	Threats or Force	No Threats or Force
	Per cent	Per Cent	Per Cent	Per Cent	Per Cent	Per Cent
Under 7	52.0	48.0	81.8	18.2	63.6	36.4
7 – 11	44.7	55.3	81.8	18.2	57.1	42.9
12 – 13	50.0	50.0	75.0	25.0	50.2	49.8
14 – 15	64.0	36.0	62.4	37.6	59.3	40.7
16 – 17	75.0	25.0	75.9	24.1	69.4	30.6
18 – 20	75.9	24.1	75.7	24.3	73.5	26.5
TOTAL	61.8	38.2	72.9	27.1	59.7	40.3

National Police Force Survey.

Findings concerning the use of threats or force by offenders in relation to victims of certain ages are presented in Table 25.3. The findings indicate that, in general, victims of all ages were proportionally more likely to be threatened or forced by offenders less than three years older than they, than by offenders either younger than or more than three years older than their victims. This finding is especially stark in relation to victims under the age of 14: in more than four in five (81.8 per cent) occurrences involving victims 11 or younger, and where the offenders were less than three years older than their victims, threats or force had been used. This proportion dropped only slightly with respect to the same category of offenders in occurrences involving victims 12 or 13 years of age (75.0 per cent). With respect to victims 14 and older, the use of threats or force by offenders is virtually a constant, and does not vary appreciably with disparities in age between offenders and victims.

The findings strongly suggest that young victims are as likely, and often more likely, to be threatened or forced to engage in sexual acts by persons relatively close in age than by older persons. This conclusion is supported by the Committee's complementary findings in the National Police Force Survey concerning the reactions of victims to the sexual encounter, particularly when viewed in relation to the age disparity between the offender and victim.

Table 25.4

Reactions of Victims by Disparities in Age between Suspected Offenders and Victims

Reaction of Victim to Sexual Encounter	Offender Younger Than Victim	Offender Less Than 3 Years Older Than Victim	Offender More Than 3 Years Older Than Victim
	Per Cent	Per Cent	Per Cent
Resisted	61.2	53.1	50.6
Resisted with a weapon	0.1	0.9	0.2
Fled	22.7	22.9	15.5
Submitted, but did not consent	14.4	15.7	25.5
Willingly participated	1.6	7.4	8.2
TOTAL	100.0	100.0	100.0

National Police Force Survey.

In light of the findings presented in Table 25.4, it is apparent that most young sexual victims either resisted or fled from their assailants. A much smaller proportion submitted without consenting, and few willingly participated in the sexual encounter. Proportionately, more resistance was offered to younger offenders than to offenders more than three years older than their victims; correspondingly, more victims either submitted to or willingly participated in the sexual encounter with offenders more than three years older than they, than did victims whose offenders were relatively younger. This trend reveals itself more sharply, as documented in the findings given in Table 25.5, when specific age groups of victims are considered in relation to their resistance, submission, or willing participation in the sexual encounter.

The assumption that sexual encounters between young persons close in age which come to police attention are less threatening or serious to the complainant is refuted by the findings given in Table 25.5. Although, in general, very young victims were less likely to resist their assailants, it is apparent that the proportion of victims who resisted their assailants rises markedly with age, from about two in three cases involving children 7-11 to more than three in four cases involving victims 16 and older. Further, offenders comparatively close in age to their victims posed a greater threat (in terms of the resistance offered by victims) than did offenders more than three years older than they.

Table 25.5

Reactions of Victims by their Ages in relation to Disparities in Age between Suspected Offenders and Victims

Age of Victim	Offender Younger Than Victim		Offender Less Than 3 Years Older		Offender More Than 3 Years Older	
	Resisted	Willing or Submitted	Resisted	Willing or Submitted	Resisted	Willing or Submitted
	Per Cent	Per Cent	Per Cent	Per Cent	Per Cent	Per Cent
Under 7	72.2	27.8	30.0	70.0	36.6	63.4
7 – 11	85.7	14.3	66.7	33.3	66.5	33.5
12 – 13	88.9	11.1	80.0	20.0	70.5	29.5
14 – 15	87.2	12.8	68.0	32.0	67.6	32.4
16 – 17	79.3	20.7	83.1	16.9	73.2	26.8
18 – 20	85.6	14.4	84.0	16.0	77.1	22.9
TOTAL	84.0	16.0	76.9	23.1	66.3	33.7

National Police Force Survey. Categories include: *Resisted*, fled, used weapon; and *Willing and Submitted*.

A complementary means of testing whether sexual encounters between persons close in age are qualitatively different from those in which there is a wide age disparity between the parties is to examine the nature of the sexual acts that occur in these different contexts. The salient finding documented in Table 25.6 is the sheer comparability in the types of sexual acts perpetrated by offenders who were either younger than, less than three years older than, or more than three years older than their victims. For each group of offenders, the acts of "fondling breasts/buttocks", "fondling genitals", and "kissing sexual parts of the body" constituted the majority of sexual acts committed, and there are no appreciable differences in the nature of sexual acts perpetrated by offenders either younger, about the same age, or more than three years older than their victims.

In relation to the sexual encounters involving young persons that came to police attention, the findings clearly indicate that enacting a special "close in age" exception to the law of sexual offences against young persons would likely serve to remove protection for young persons. Such a proposal is not supported by the Committee's research findings.

In the Committee's judgment, a special "close in age" exception in the law of sexual offences is wrong in principle. In many sexual offences (for example, the three forms of "sexual assault" in the *Criminal Code*), proving the complainant's lack of consent is a prerequisite to a successful prosecution. This is, for reasons given in Part III of the Report, often difficult to prove, and typically reduces to a contest between the perceived credibility of the complainant and the accused. Where a legal "close in age" exception exists, there is a real possibility that prosecutional decisions may be influenced in dif-

ficult cases by the fact that the offender is within the age exception, notwithstanding that the complainant states that he or she did not consent. Were this to occur, it would have the effect of removing protection from young victims of sexual offences whose assailants were close in age to them, and would contradict the traditional policy of the criminal law in protecting the bodily integrity of all persons from unwanted touchings. For these reasons, the Committee considers that the "close in age" exception in the context of sexual offences involving young persons is an unacceptable legal reform.

Table 25.6

Types of Sexual Acts Committed in relation to Disparities in Age between Suspected Offenders and Victims

Types of Sexual Acts Committed Against Victims	Offender Younger Than Victim (n=134)	Offender Less Than 3 Years Older (n=453)	Offender More Than 3 Years Older (n=5544)
	Per Cent	Per Cent	Per Cent
Fondling breasts/buttocks	31.6	31.8	24.0
Fondling genitals	29.4	29.7	31.7
Kissing sexual parts	9.3	9.0	10.3
Thigh intercourse	0.9	1.1	2.1
Oral/genital	5.3	3.4	8.1
Oral/anal	0.3	—	0.6
Attempted vaginal penetration with penis	3.2	3.7	4.1
Vaginal penetration with penis	15.0	17.8	10.3
Vaginal penetration with finger	2.3	1.6	4.1
Vaginal penetration with object	0.2	0.2	0.4
Attempted anal penetration with penis	0.9	0.5	1.5
Anal penetration with penis	0.7	0.7	1.8

National Police Force Survey.

Types of Sexual Offences by Sexual Acts Committed

From the information recorded on the police general occurrence form, each sexual act that was reported to have occurred was noted, regardless of the number of sexual offences specified on the form. For example, although the investigating officer may have indicated that the occurrence was "rape", the report would invariably disclose that sexual acts in addition to sexual intercourse occurred, often as a prelude to the sexual intercourse. Further, in a number of instances, more than one sexual offence was listed on the general

occurrence form; no indication was given in these reports concerning which sexual acts corresponded to which sexual offence under investigation. Accordingly, the total number of sexual acts which were noted greatly exceeds the total number of sexual offences specified on the general occurrence forms.

Of the 6203 police occurrences on which information was compiled by the Committee, the great preponderance (5854, or 94.4 per cent) listed only one sexual offence on the general occurrence form. In the balance of these cases (349, or 5.6 per cent), some combination of two or more sexual offences was listed.

Single Offence Reported	Number of Occurrences
Rape	357
Attempted rape	81
Sexual intercourse with a female under 14	82
Sexual intercourse with a female 14 or 15	64
Sexual intercourse with step-daughter, foster daughter, or female ward	23
Sexual intercourse with a feeble-minded female	5
Incest	76
Indecent assault on a female	2,311
Indecent assault on a male	593
Buggery	23
Gross indecency	101
Corrupting children	1
Contributing to juvenile delinquency	114
Indecent act	2,023
TOTAL	5,854

The offences of indecent assault on a female (2311) and indecent act (2023) were by far the most frequently listed sexual offences. Next in frequency were indecent assault on a male (593), rape (357) and contributing to juvenile delinquency (114). Knowing the type of sexual offence listed by the investigating police officer, however, gives only a rough indication of the nature of the sexual acts committed. In this regard, information was collected in the National Police Force Survey both on the acts performed by the suspect on the victim and the acts performed by the victim on the suspect. The findings given in Tables 25.7 and 25.8 pertain to the 5854 occurrences in which a single sexual offence was listed by the investigating police officer.

The findings given in these tables indicate that acts of exposure constituted the most prevalent sexual act committed. The fondling of young persons' genitalia and breasts or buttocks were the next most prevalent sexual

Table 25.7

Sexual Offences in relation to Sexual Acts Performed on the Victim by the Suspect

Sexual Act	Rape (n=357)	Attempted Rape (n=81)	Sex. Int. Female Under 14 (n=82)	Sex. Int. Female 14 or 15 (n=64)	Sex. Int. Feeble-Minded Female (n=5)	Indecent Assault Female (n=2,311)	Indecent Assault Male (n=593)	Incest (n=76)	Sex. Int. Step-Daughter etc. (n=23)	Buggery (n=23)	Gross Indecency (n=101)	Indecent Act (n=2,823)	Corrupting Children (n=1)	Contributing to/ J.D.A. (n=114)
Fondling/touching breasts/buttocks	99	27	20	16	2	1,203	74	26	2	3	6	10	1	25
Fondling/touching genital area	79	24	15	14	2	1,193	360	25	5	2	21	6	1	49
Kissing mouth and other areas of the body	65	21	14	13	—	330	58	12	—	4	11	5	—	20
Thigh intercourse	4	2	1	1	—	81	12	2	4	—	3	—	—	3
Oral/genital	34	5	4	2	—	108	142	7	1	3	41	1	—	27
Oral/anal	—	—	—	—	—	16	6	—	2	—	1	—	—	—
Attempted vaginal penetration with penis	18	44	3	—	—	128	2	6	1	1	3	—	—	—
Vaginal penetration with penis	326	4	75	61	4	41	2	60	2	1	1	—	—	20
Vaginal penetration with finger	14	10	—	1	1	164	1	7	—	—	1	—	—	1
Vaginal penetration with object	1	—	—	—	—	14	—	—	—	—	1	—	—	—
Attempted anal penetration with penis	7	1	1	—	—	19	31	3	4	4	3	—	—	—

Table 25.7 (continued)

Sexual Offences in relation to Sexual Acts Performed on the Victim by the Suspect

Sexual Act	Rape (n=357)	Attempted Rape (n=81)	Sex. Int. Female Under 14 (n=82)	Sex. Int. Female 14 or 15 (n=64)	Sex. Int. Feeble-Minded Female (n=5)	Indecent Assault Female (n=2,311)	Indecent Assault Male (n=593)	Incest (n=76)	Sex. Int. Step-Daughter etc. (n=23)	Buggery (n=23)	Gross Indecency (n=101)	Indecent Act (n=2,023)	Corrupting Children (n=1)	Contributing to/ J.D.A. (n=114)
Anal penetration with penis	11	—	2	—	—	2	17	3	1	17	2	1	—	3
Anal penetration with finger	1	1	—	—	—	10	11	2	—	1	2	—	—	—
Anal penetration with an object	1	—	—	—	—	2	7	—	—	—	—	—	—	—
Bestiality	—	—	—	—	—	—	—	—	—	—	—	1	—	—
Suspect exposed genitals	20	12	3	3	—	244	68	5	1	1	31	1,862	—	20
Suspect exposed nude body	7	6	6	5	—	67	13	5	—	—	10	189	—	21
Suspect aided another in sexual act	6	1	2	1	—	7	5	—	—	—	—	2	—	2
Suspect attempted to remove or removed clothing	34	20	2	4	1	185	50	8	1	2	9	7	—	15
TOTAL NUMBER OF SEXUAL ACTS	727	178	148	121	10	3,814	859	171	24	39	146	2,084	2	206

National Police Force Survey. Listing of cases in which only one sexual offence was reported, n=5854.

Table 25.8

Sexual Offences in relation to Sexual Acts Performed on the Suspect by the Victim

Sexual Act	Rape (n=357)	Attempted Rape (n=81)	Sex. Int. Female Under 14 (n=82)	Sex. Int. Female 14 or 15 (n=64)	Sex. Int. Feeble-Minded Female (n=5)	Indecent Assault Female (n=2311)	Indecent Assault Male (n=593)	Incest (n=76)	Sex. Int. Step-Daughter, etc. (n=23)	Buggery (n=23)	Gross Indecency (n=101)	Indecent Act (n=2023)	Contributing to/J.D.A. (n=114)
Fondling/touching breasts/buttocks	1	—	2	1	—	10	8	1	—	—	11	1	3
Fondling/touching genital area	10	5	7	4	—	156	71	9	4	—	4	11	18
Kissing mouth and other areas of the body	1	—	7	2	—	30	8	3	3	—	—	—	7
Thigh intercourse	—	—	—	—	—	2	—	—	—	—	—	—	—
Oral/genital	53	2	6	2	—	100	100	12	2	3	4	—	21
Oral/anal	—	—	—	—	—	2	2	—	—	—	—	—	—
Attempted vaginal penetration with penis	1	—	1	1	—	—	—	3	—	—	—	—	—
Vaginal penetration with penis	—	—	—	—	—	—	—	—	—	—	—	—	—
Vaginal penetration with finger	—	—	—	—	—	3	—	—	—	—	—	—	—
Vaginal penetration with object	—	—	—	—	—	—	—	—	—	—	—	—	—
Attempted anal penetration with penis	—	—	—	—	—	—	—	—	—	—	—	—	—

Table 25.8 (continued)

Sexual Offences in relation to Sexual Acts Performed on the Suspect by the Victim

Sexual Act	Rape (n=357)	Attempted Rape (n=81)	Sex. Int. Female Under 14 (n=82)	Sex. Int. Female 14 or 15 (n=64)	Sex. Int. Feeble-Minded Female (n=5)	Indecent Assault Female (n=2311)	Indecent Assault Male (n=593)	Incest (n=76)	Sex. Int. Step-Daughter, etc. (n=23)	Buggery (n=23)	Gross Indecency (n=101)	Indecent Act (n=2023)	Contributing to/J.D.A. (n=114)
Anal penetration with penis	—	—	—	—	—	—	4	—	—	1	—	—	—
Anal penetration with finger	—	—	—	—	—	—	—	—	—	—	—	—	—
Anal penetration with an object	—	—	—	—	—	—	—	—	—	—	—	—	—
Bestiality	—	—	—	—	—	—	—	—	—	—	—	—	—
Victim exposed genitals	3	1	1	2	—	8	18	3	—	—	—	3	1
Victim exposed nude body	9	5	4	3	—	27	8	5	—	—	1	—	8
Victim aided another in sexual act	—	—	2	—	—	1	—	—	—	—	—	—	1
Victim removed clothing	—	—	—	—	—	5	1	—	2	—	—	—	1
TOTAL NUMBER OF SEXUAL ACTS	78	13	30	15	—	344	220	36	11	4	20	15	60

National Police Force Survey. Listing of cases in which only one sexual offence was reported, n=5853 with one case of corrupting a child not listed.

acts, followed by acts of vaginal intercourse. The most striking implication of these findings is the findings themselves: virtually every conceivable sexual act is represented, to greater or lesser degrees. Plainly, child sexual abuse comprises a wide variety of sexual behaviours. On average, for the 5584 cases in which a single sexual offence was reported, 1.5 sexual acts had been committed against young victims.

This information makes it clear that child sexual abuse not only involves acts committed against the child or youth, but that offenders may also induce or coerce the young person to manipulate the offender's body. In about one in seven cases (14.5 per cent), the victim was induced or forced to perform sexual acts on the offender (Table 25.8). Acts of this kind tended to occur more frequently in situations in which the offender was either well known to the child or held a position of trust to the child. In slightly less than half of the cases in which the offences of incest (47.4 per cent) and sexual intercourse by a guardian (47.8 per cent) were reported, the child or youth had performed sexual acts on the suspected offender.

Many sexual offences in Canadian criminal law are vague: for instance, the offence of 'gross indecency' subsumes a wide variety of sexual acts. In addition, even where the offence is not vague, for example, sexual intercourse with a girl under 14, other sexual acts between the parties may have occurred as a prelude to the sexual intercourse, which are not relevant for the purpose of proving that particular offence. The findings show clearly that a wide range of sexual acts is subsumed under different types of sexual offences, even where specific acts are proscribed. For seven sexual offences in which the acts proscribed are clearly specified, there was congruence between the acts and the behaviours prohibited in the offences in about six in seven instances (86.7 per cent). In the case of the offence of buggery for which 23 offences were docu-

Offences Specifying Sexual Intercourse	Number of Offences Reported	Reported Acts of Vaginal Intercourse with Penis	Proportion of Acts to Offences
			Per cent
Rape	357	326	91.3
Incest	76	60	78.9
Sexual intercourse, under 14	82	75	91.5
Sexual intercourse, 14-15	64	61	95.3
Sexual intercourse, step-daughter, etc.	23	2	8.7
Sexual intercourse, feeble-minded	5	4	80.0
TOTAL	607	528	87.0

mented, anal penetration with a penis was reported to have occurred in about four in five (78.3 per cent) of these incidents (17 involving acts committed against victims and one case where a victim had performed this act on a suspected offender.

Six sexual offences proscribe sexual intercourse; in relation to these offences, there was considerable variation in regard to whether sexual intercourse with a penis was reported to have occurred.

In the case of vaguely worded offences, such as indecent assault on a female and indecent assault on a male, the full range of sexual acts was reported to have been committed. These findings strongly support the Committee's recommendations concerning the need to restructure the sexual offences to correspond more directly to the types of sexual acts committed. When the offences reported are considered in relation to the sexual acts committed, the findings indicate that a wide range of sexual acts is subsumed under different types of sexual offences, even where specific behaviours are proscribed.

Threats and Use of Force

Two points must be noted in relation to the findings concerning the use of threats or force by offenders against victims. First, the National Police Force Survey, by definition, provides information only on sexual offences against young persons that came to police attention. Second, that the police were notified does not necessarily mean that the sexual act was committed without the young person's consent. Where the child is very young, a valid consent to sexual activity should not be presumed. Moreover, until the amendments introduced in 1983, Canadian law deemed the consent of a child under 14 not to be a defence to sexual offence charges, even where the young person arguably appreciated the nature of the sexual act and participated in it freely and willingly with his or her partner.

Where the young person is 14 or older, the law, in general, recognizes that he or she can give both a *de facto* and a *legal* consent to certain sexual acts with another person; the question becomes, where a form of sexual assault (formerly indecent assault) is alleged, whether the young person in fact consented. This is a subjective issue, one that does not readily lend itself to statistical treatment. What is both possible and illuminating, however, is to take into account the objective considerations from which inferences about the young person's consent or lack of consent can be drawn, for example, the use of threats or force by the offender and the nature of the victim's resistance to the sexual act. An assessment of these considerations sheds light on the consensual or non-consensual nature of the sexual acts involving young persons about whom information was obtained in the National Police Force Survey.

The category "victim was threatened" includes all situations in which the victim's submission to or acquiescence in the sexual act was accomplished by

means of the offender's threats directed towards the victim. The category "victim was forced" includes all situations in which the victim's submission to or acquiescence in the sexual act was accomplished either by the offender's physical coercion of the victim, his or her direct assault on the victim, or his or her brandishing a weapon during the sexual act.

Under the state of the law as it existed when the findings were collected, the "consent" of a person under age 14 to any form of sexual activity with another person was not a defence for the accused. In this regard, almost three in five (56.3 per cent) of the occurrences studied in the survey disclosed a sexual offence under the then existing criminal law. Of the 5,913 occurrences, for which this information was available, 3,327 (or 56.3 per cent) involved a child under the age of 14, and 4,599 (or 77.8 per cent) involved a child under the age of 16.

Children under Age 14	Males	Females	Total
Number	669	2658	3327
Per cent of all all victims	77.6	52.6	56.3

The findings given in Table 25.9 and 25.10 indicate that threats or force were used against the victim in more than three in five occurrences with respect both to female victims (61.0 per cent) and male victims (61.8 per cent). The use of threats by the offender was less of a factor in occurrences involving children under the age of seven than in incidents involving older children. Further, children of both sexes under the age of 14 were less likely to be either threatened or forced by the offender than were young persons 14 and older.

Resistance Offered by Victims

That the victim was neither threatened nor forced to submit to or acquiesce in the sexual act with the offender does not imply that the victim gave his or her consent in a manner recognized by law. It only implies that this was at least a possibility in any given case. The magnitude of this possibility can be better assessed by considering the reactions of young sexual victims to the incident in question, as noted by the investigating officer.

The category "victim used weapon" refers to cases in which the victim used an object in order to defend himself or herself from the offender. The category "submitted" refers to cases in which the victim submitted to the sexual act, without consenting to the sexual act.

Children under seven years of age, and of both sexes, tended to be more compliant with their molesters; this is neither surprising developmentally nor

Table 25.9

The Use or Non-Use of Threats and Force in Sexual Offences Committed against *Females* under Age 21

Age of Female against whom Offence was Alleged to have been Committed	Victim was Threatened		Victim was Forced		Victim was neither Threatened nor Forced		Total	
	Number	Per Cent	Number	Per Cent	Number	Per Cent	Number	Per Cent
Under age 7	9	1.7	332	61.7	197	36.6	538	100.0
7 – 11 years	40	3.2	643	50.7	584	46.1	1267	100.0
12 – 13 years	22	2.6	428	50.2	403	47.2	853	100.0
14 – 15 years	36	3.1	659	57.7	447	39.2	1142	100.0
16 – 17 years	22	3.8	387	67.7	163	28.5	572	100.0
18 – 20 years	15	2.2	489	72.0	175	25.8	679	100.0
TOTAL	144	2.8	2938	58.2	1969	39.0	5051	100.0

National Police Force Survey. Information missing for 241 cases.

Table 25.10

The Use or Non-Use of Threats and Force in Sexual Offences Committed against *Males* under Age 21

Age of Male against whom Offence was Alleged to have been Committed	Victim was Threatened		Victim was Forced		Victim was neither Threatened nor Forced		Total	
	Number	Per Cent	Number	Per Cent	Number	Per Cent	Number	Per Cent
Under age 7	9	4.2	121	56.5	84	39.3	214	100.0
7 — 11 years	28	8.8	188	58.7	104	32.5	320	100.0
12 — 13 years	4	3.0	64	47.4	67	49.6	135	100.0
14 — 15 years	6	4.6	70	53.8	54	41.6	130	100.0
16 — 17 years	2	5.9	19	55.9	13	38.2	34	100.0
18 — 20 years	3	10.3	19	65.5	7	24.2	29	100.0
TOTAL	52	6.0	481	55.8	329	38.2	862	100.0

National Police Force Survey. Information missing for 49 cases.

relevant legally. Over half of the girls (55.2 per cent) and about a third of the boys (32.5 per cent) in this age group submitted without resistance to the acts committed against them.

These findings indicate that a low proportion of young victims was reported to have "participated willingly" in the sexual act with the other party, especially in occurrences involving female victims. Of female victims, only about one in 16 (6.1 per cent) was reported to have willingly participated in the sexual act. A more realistic measure in this regard is female victims in the 14-20 age group, since the "willing participation" of a female under 14 was not a valid defence for the accused when the findings were collected. Of female victims between the ages of 14 and 20, about one in 20 (5.2 per cent) was reported to have participated willingly (i.e., "consented") in the sexual act with the other party.

Reactions of Victims	Male Victims (n = 737)	Female Victims (n = 5250)
	Per Cent	Per Cent
Used weapon	0.1	0.2
Resisted	40.2	54.2
Fled	9.0	18.1
Submitted	35.5	21.3
Participated willing	15.2	6.1
TOTAL	100.0	99.9*

Information missing for 216 cases. (42 female victims, 174 male victims)

*Rounding error

Proportionately, more male than female victims were reported to have participated willingly in the sexual act with the suspect (15.2 per cent for males, as opposed to 6.1 per cent for females). Considering only male victims in the 14-20 age group, about one in six (16.8 per cent) was reported to have participated willingly. Virtually all of these incidents involving male victims were homosexual in nature and would have been charged under the offences of indecent assault on a male, buggery, gross indecency or contributing to juvenile delinquency. **The findings indicate that, if the age of "full consent" to heterosexual or homosexual behaviour were lowered from 21 to 18, this would not affect police charging practices to any appreciable extent.**

The findings on the lack of "willing participation" by young persons are significant in themselves, but it should not be overlooked that the protection of young persons' bodily integrity against unwanted sexual touchings is only one of the legitimate policy bases of the criminal law of sexual offences, particularly those committed against young persons. Notwithstanding that a young

person can and does give a *de facto* consent to sexual activity with another person, the criminal law has traditionally played a role in sanctioning offenders who engage in sexual acts thought to be harmful to young persons (for example, sexual intercourse and buggery) or who exploit a young person sexually by misusing a position of trust or authority (for example, the offences of incest, sexual intercourse with one's step-daughter and contributing to juvenile delinquency). That a young person willingly participates in a sexual act with another person does not conclude the question whether such behaviour is within the legitimate province of the criminal law. Other crucial considerations are the age of the young person, the nature of the sexual act engaged in and the social or legal relationship between the young person and his or her sexual partner.

It is clear from the findings that the vast majority of police occurrences indicating a sexual offence against a young person involved either young children unable to give either a *de facto*, and certainly not a legal, consent to sexual behaviour, or older children who in fact did not consent to the behaviour in question. There is no case to be made from these findings that police resources are being used to investigate either unfounded allegations, or sexual behaviour involving young persons that is venial or trivial in nature. Nor is it plausible to infer from these findings that a substantial proportion of the incidents involved "sexual experimentation" among teenagers, in which police intervention was seen to be unnecessary or heavy-handed. On the contrary, the findings strongly suggest that the vast majority of these incidents were considered serious both by the young person or by others on his or her behalf, and by the police.

Sexual Offences by Type of Association

A key social issue is the relative extent to which young persons are at risk of sexual abuse from different persons in their lives. This social issue generates a corollary legal one, namely, how should the criminal law (child welfare law implicitly does so) reflect the fact that young persons may be proportionately more at risk from persons who are prominent in their lives, for example, family members and persons in a guardianship or trust relationship with respect to the young person? The following review presents the findings from the National Police Force Survey with respect to: the relationship between offenders and their victims; the types of sexual offences committed; the nature of the sexual acts committed; and the ages of the victims. In light of the fact that more than one offence may have been committed, the listing of offences given in Table 25.11 exceeds the number of victims about whom information was assembled in the National Police Force Survey. In addition to these summary findings, the specific listing of offences by the types of association is given in Tables 25.12 to 25.18. Several trends are apparent from these findings.

- **Male persons whom the female person either knew or was acquainted with (191 offences) accounted for almost as many rape offences as male persons in the "other/stranger" category (219 offences). This trend was only slightly less evident with respect to the attempted rape offences.**

Table 25.11

Sexual Offences Committed against Children under Age 21 by Type of Association with Suspected Offender

Type of Offence Committed Against the Child	Person Committing Offences Against the Child								
	Incest Relation-Ship	Other Blood Relative	Guardian-Ship Position	Other Family Member	Position of Trust	Friends/ Acquain-Tances	Other/ Stranger	Unknown	Total All Offences
Rape	8	10	9	10	4	150	219	5	415
Attempted rape	1	3	1	3	2	28	59	1	98
Intercourse with female under age 14	8	8	21	13	5	52	7	4	118
Intercourse with female age 14 but under 16	2	5	8	3	—	58	8	2	86
Intercourse with feeble-minded	—	—	—	—	1	1	5	—	7
Indecent assault female	190	93	111	76	112	787	1,101	22	2,492
Indecent assault male	21	14	22	10	56	263	274	10	670
Incest	93	—	3	2	—	—	1	—	99
Intercourse with female ward	—	—	7	2	—	—	—	—	9
Buggery	2	5	8	3	—	34	16	—	68
Gross indecency	34	10	18	14	14	82	75	7	254
Indecent act	3	—	2	—	5	104	1,938	7	2,059
Corrupting child	3	—	—	1	—	—	1	—	5
Contributing to/J.D.A.	16	5	4	10	11	124	25	11	206
TOTAL	381	153	214	147	210	1,683	3,729	69	6,586

National Police Force Survey.

Table 25.12

Sexual Offences Committed against Children under Age 21 involving a Relationship of Incest

Type of Sexual Offence Committed Against the Child	Person Committing Offences Against the Child								
	Father	Mother	Brother	Half-Brother	Sister	Half-Sister	Grandfather	Grandmother	Total
Rape	5	—	1	2	—	—	—	—	8
Attempted rape	—	—	—	—	—	—	1	—	1
Intercourse with female under age 14	6	—	—	1	—	—	1	—	8
Intercourse with female age 14 but under 16	—	—	1	1	—	—	—	—	2
Intercourse with feeble-minded	—	—	—	—	—	—	—	—	—
Indecent assault female	158	1	18	2	1	—	10	—	190
Indecent assault male	16	—	1	1	—	—	3	—	21
Incest	81	1	10	1	—	—	—	—	93
Seduction of female ward	—	—	—	—	—	—	—	—	—
Buggery	2	—	—	—	—	—	—	—	2
Gross indecency	28	1	1	3	—	—	1	—	34
Indecent act	3	—	—	—	—	—	—	—	3
Corrupting a child	2	1	—	—	—	—	—	—	3
Contributing to/J.D.A.	12	1	—	2	—	—	1	—	16

National Police Force Survey.

Table 25.13

Sexual Offences Committed against Children under Age 21 by Relatives (Non-Incest)

Type of Sexual Offence Committed Against the Child	Person Committing Offence Against the Child					
	Uncle	Aunt	Nephew	Niece	Cousin	Total
Rape	6	—	—	—	4	10
Attempted rape	2	—	—	—	1	3
Intercourse with female under 14	6	—	—	—	2	8
Intercourse with female 14 but under 16	5	—	—	—	—	5
Intercourse with feeble-minded	—	—	—	—	—	—
Indecent assault female	74	—	1	—	18	93
Indecent assault male	11	—	1	—	2	14
Incest	—	—	—	—	—	—
Seduction female ward	—	—	—	—	—	—
Buggery	5	—	—	—	—	5
Gross indecency	9	—	—	—	1	10
Indecent act	—	—	—	—	—	—
Corrupting child	—	—	—	—	—	—
Contributing to/ J.D.A.	3	—	1	—	1	5

National Police Force Survey.

- By way of contrast, the "unlawful sexual intercourse" offences were committed in the vast majority of cases by male persons whom the girl either knew or was acquainted with (107 of the 118 offences where the girl was under 14, and 76 of the 86 offences where the girl was 14 or 15). This may be accounted for by the fact that the unlawful sexual intercourse offences can be charged notwithstanding that the girl consented to the sexual intercourse. What is striking is that, with respect to girls under 14, offences of this sort committed by friends or acquaintances (52 offences) were fewer in number than the number of offences committed by the girls' male family members, guardians, or persons in positions of trust (55 offences). This trend dropped sharply with respect to girls 14 or 15.
- Concerning the offences of indecent assault on a male or female, male persons whom the young person either knew or was acquainted with accounted for a sizeably greater proportion of offences against both males and females than male persons in the "other/stranger" category. With respect

to offences of indecent assault on a female, the breakdown was 1369 offences in which the female knew or was acquainted with the offender, as opposed to 1101 offences in which the offender was in the "other/stranger" category. This proportion was even greater in relation to offences of indecent assault on a male: 386 offences in which the male victim knew or was acquainted with the male offender, as opposed to 274 offences in which the offender was in the "other/stranger" category.

- Of the 99 offences listed as incest, six involved offenders who could not legally be convicted of that offence, since they were outside the prohibited degrees of consanguinity specified in section 150 of the *Criminal Code*. In these instances, it appears that the police officers involved may have been unaware of the specific legal elements of the incest offence.

Table 25.14

Sexual Offences Committed against Children under Age 21 by Persons in Guardianship Positions

Type of Sexual Offence Committed Against the Child	Person Committing Offence Against the Child				
	Step-Father	Foster-Father	Legal Guardian	Employer/ Supervisor	Total
Rape	6	2	—	1	9
Attempted rape	1	—	—	—	1
Intercourse with female under 14	21	—	—	—	21
Intercourse with female 14 but under 16	8	—	—	—	8
Intercourse with feeble-minded	—	—	—	—	—
Indecent assault female	79	4	1	27	111
Indecent assault male	7	2	—	13	22
Incest	3	—	—	—	3
Seduction female ward	6	1	—	—	7
Buggery	7	1	—	—	8
Gross indecency	14	1	—	3	18
Indecent act	—	—	—	2	2
Corrupting child	—	—	—	—	—
Contributing to/ J.D.A.	1	—	—	3	4

National Police Force Survey.

Table 25.15

Sexual Offences Committed against Children under Age 21 by Other Family Members

Type of Sexual Offence Committed Against the Child	Person Committing Offence Against the Child						
	Adoptive Father	Adoptive Brother	Adoptive Grandfather	Foster Brother	Common-Law Parent	Other Family Members	Total
Rape	1	—	1	—	4	4	10
Attempted rape	—	—	—	—	2	1	3
Intercourse with female under age 14	2	—	—	1	3	7	13
Intercourse with female age 14 but under 16	—	—	—	—	2	1	3
Intercourse with feeble-minded	—	—	—	—	—	—	—
Indecent assault female	8	—	5	—	50	13	76
Indecent assault male	—	—	—	—	5	5	10
Incest	1	—	—	—	1	—	2
Seduction of female ward	2	—	—	—	—	—	2
Buggery	—	1	—	—	1	1	3
Gross indecency	2	—	—	—	11	1	14
Indecent act	—	—	—	—	—	—	—
Corrupting a child	—	—	—	—	1	—	1
Contributing to/J.D.A.	1	—	—	—	4	5	10

National Police Force Survey.

Table 25.16

Sexual Offences Committed against Children under Age 21 by Persons in Positions of Trust

Type of Sexual Offence Committed Against the Child	Person Committing Offence Against the Child						
	Day Care Worker	Teacher	Youth Worker	Baby-Sitter	Group Home Worker	School Bus Driver	Total
Rape	—	1	—	3	—	—	4
Attempted rape	—	—	—	2	—	—	2
Intercourse with female under age 14	—	—	—	5	—	—	5
Intercourse with female age 14 but under 16	—	—	—	—	—	—	—
Intercourse with feeble-minded	—	1	—	—	—	—	1
Indecent assault female	3	8	5	86	2	8	112
Indecent assault male	2	6	6	41	1	—	56
Incest	—	—	—	—	—	—	—
Seduction of female ward	—	—	—	—	—	—	—
Buggery	—	—	—	—	—	—	—
Gross indecency	2	—	1	11	—	—	14
Indecent act	—	1	—	3	1	—	5
Corrupting a child	—	—	—	—	—	—	—
Contributing to/J.D.A.	—	4	1	5	1	—	11

National Police Force Survey.

Table 25.17

Sexual Offences Committed against Children under Age 21 by Friends and Acquaintances

Type of Sexual Offence Committed Against the Child	Person Committing Offence Against the Child						
	Boyfriend	Girlfriend	Personal Friend	Family Friend	Neighbour	Acquaintance	Total
Rape	7	—	34	17	9	83	150
Attempted rape	5	—	2	4	5	12	28
Intercourse with female under age 14	16	1	7	3	2	23	52
Intercourse with female age 14 but under 16	29	—	5	4	1	19	58
Intercourse with feeble-minded	—	—	—	—	—	1	1
Indecent assault female	18	2	70	107	195	395	787
Indecent assault male	2	—	35	34	65	127	263
Incest	—	—	—	—	—	—	—
Seduction of female ward	—	—	—	—	—	—	—
Buggery	3	—	1	5	3	22	34
Gross indecency	3	—	4	14	18	43	82
Indecent act	—	—	4	5	62	33	104
Corrupting a child	—	—	—	—	—	—	—
Contributing to/J.D.A.	22	—	16	9	10	67	124

National Police Force Survey.

Table 25.18

Sexual Offences Committed against Children under Age 21 by Other Persons and Strangers

Type of Sexual Offence Committed Against the Child	Person Committing Offences Against the Child					
	Co-Employee	Boarder	Trick	Co-Resident Group Home	Stranger	Total
Rape	4	—	5	—	210	219
Attempted rape	1	—	—	—	58	59
Intercourse with female under age 14	—	1	—	—	6	7
Intercourse with female age 14 but under 16	—	—	—	—	8	8
Intercourse with feeble-minded	—	—	—	—	5	5
Indecent assault female	10	17	3	1	1070	1101
Indecent assault male	4	12	2	1	255	274
Incest	—	—	—	—	1	1
Seduction of female ward	—	—	—	—	—	—
Buggery	1	1	1	—	13	16
Gross indecency	—	5	—	—	70	75
Indecent act	—	2	—	—	1936	1938
Corrupting a child	—	—	—	—	1	1
Contributing to/J.D.A.	—	1	—	—	24	25

National Police Force Survey.

- With respect to the offence of buggery (sexual intercourse *per anum* by a male on a male or female) and gross indecency, the offender was much more likely to be known to the young person than not. For the offences of buggery, in 52 of the 68 occurrences the young person knew or was acquainted with the offender; for the offences of gross indecency, the offender was known to or acquainted with the young person in 172 of the 247 documented occurrences.
- The offences of "indecent act", which almost exclusively are acts of genital exposure by males, were committed by strangers in 94.1 per cent of the occurrences.
- The charge of "contributing to juvenile delinquency" was relatively seldom laid by the police. This offence constituted 3.1 per cent of the 6,586 offences listed. Where this offence was listed, it was used much more often where the offender was known to the young person than otherwise.
- Twenty-nine step-fathers were listed in relation to the "unlawful sexual intercourse" offences, and only six in relation to the specific offence of sexual intercourse with one's step-daughter. A probable explanation for this is the fact that, under the law as it existed when the findings were collected, the "unlawful sexual intercourse" offences did not require corroboration as a matter of law, whereas the offence of sexual intercourse with one's step-daughter was attended by a statutory corroboration requirement.
- In 84 offences, the offender was listed as being the common-law parent of the victim. Although much smaller in absolute terms than the number of offenders who were fathers, this in no way implies that the relative risk posed by male common-law parents is less than that posed by biological fathers.
- The extent to which young persons are at risk from family friends and neighbours is noteworthy; virtually every serious sexual offence is represented by persons in these categories.

Excluding offences of indecent act, almost one in four (24.2 per cent) of the sexual offences against young persons was committed by persons either prominent in the child's life or to whom the child was particularly vulnerable; about three in five (59.1 per cent) were committed by persons whom the child

Type of Association between Victim and Suspected Offender	All Offences	Excluding Offences of "Indecent Act"
	Per Cent	Per Cent
Offender was Family Member, Guardian or in a Position of Trust with respect to the child	16.8	24.2
Offender was a Friend or Acquaintance of the child	25.6	34.9
Other/Stranger	56.6	39.6
Not Reported	1.0	1.3
TOTAL	100.0	100.0

either knew or was acquainted with. Other persons and strangers accounted for about two in five (39.6 per cent) of the sexual offences which involved a sexual touching of some sort.

Sexual Acts by Type of Association

Since several sexual acts may have been committed upon or with a child, the total number of sexual acts listed in Table 25.19 exceeds the number of children and youths (6203) about whom information was obtained in the National Police Force Survey. The findings presented in Table 25.19 indicate that, apart from the acts of exposure ("suspect exposed genitalia"), the most prevalent sexual acts committed were the fondling of the child's genitalia and the fondling of the child's breasts or buttocks (1886 acts and 1580 acts, respectively). Sexual intercourse between a male offender and a female complainant was the next most prevalent sexual act committed (681 acts). What is conspicuous from these findings is the sheer heterogeneity of the sexual behaviours committed against children and youths. In relation to these findings, the following trends are noteworthy:

- The sexual acts committed by offenders in an incest relationship with respect to their victims covered a wide range, over and above the specific acts of sexual intercourse and attempted sexual intercourse. By definition, however, the offence of incest in Canadian criminal law refers only to acts of sexual intercourse between persons closely related by blood.
- Acts of sexual intercourse and attempted sexual intercourse by a male with a female constituted about one in 10 of the total number of sexual acts committed.
- The majority of acts of genital exposure were committed by persons in the "other/stranger" category.
- With respect to acts of sexual intercourse, 13.7 per cent were committed by offenders (predominantly fathers) who were within the degrees of consanguinity specified by the incest offence in section 150 of the *Criminal Code*.
- If offenders in the incest relationship are grouped with those who were otherwise related by blood, family members, guardians, and persons in a position of trust vis-a-vis the young person, then this group accounted for 28.5 per cent of all acts of sexual intercourse. Offenders who were friends or acquaintances of their female victims accounted for 39.4 per cent of acts of sexual intercourse, while persons in the "other/stranger" category accounted for 32.1 per cent of these acts.
- Accordingly, well over a quarter (28.5 per cent) of the acts of sexual intercourse were perpetrated by offenders to whom the young person was particularly vulnerable, and almost seven in 10 (67.9 per cent) of these acts were perpetrated by offenders whom the young person knew or was acquainted with.

In relation to more serious sexual acts, a young person is at risk from persons prominent in his or her life (for example, his or her father, uncle, guardian, or common-law parent) to almost as great an extent as from strangers.

Table 25.19

Sexual Acts Committed against Children under Age 21 by Type of Association with Suspected Offender

Type of Sexual Act Committed Against the Child	Person Committing Offences Against the Child							
	Incest Relationship	Other Blood Relative	Guardianship Position	Other Family Member	Position of Trust	Friends/ Acquaintances	Others/ Strangers	Total
Fondling breasts/buttocks	137	36	104	40	32	485	746	1580
Fondling genitalia	176	69	94	60	88	663	736	1886
Kissing mouth/other parts	61	19	36	21	13	255	213	618
Thigh intercourse	19	13	7	7	3	44	26	119
Oral/genital	51	19	28	23	30	173	121	445
Oral/anal	2	—	—	2	3	11	17	35
Attempted vaginal penetration with penis	40	18	10	8	13	78	72	239
Vaginal penetration with penis	93	24	44	25	8	268	219	681
Vaginal penetration with finger	40	16	21	10	15	70	47	219
Vaginal penetration with object	5	1	3	—	3	8	4	24
Attempted anal penetration with penis	8	4	3	1	5	35	22	78
Anal penetration with penis	8	3	6	2	2	40	26	87
Anal penetration with finger	5	4	2	3	2	9	13	38
Anal penetration with object	2	—	1	1	—	4	7	15
Bestiality	—	—	—	—	—	—	2	2
Exposed genitalia	38	19	23	15	25	214	1992	2326
Exposed nude body	39	8	16	10	6	90	209	378
Suspect aided another person	2	—	1	1	—	17	9	30
Suspect removed child's clothes	25	17	15	5	10	112	179	363
TOTAL	751	270	414	234	258	2576	4660	9163

National Police Force Survey.

Persons Committing Sexual Act	All Sexual Acts	"Serious" Sexual Acts
	Per Cent	Per Cent
Family Members, Guardians, or persons in Position of Trust	21.0	30.7
Friends/Acquaintances	28.1	36.6
Other persons/strangers	50.9	32.7
TOTAL	100.0	100.0

Since offenders in the former category have greater opportunity to abuse sexually young persons in their charge and, correspondingly, are persons to whom these children are particularly vulnerable, the Committee believes that the criminal law must be strengthened to afford a more important deterrent role in this context.

Ages of Victims by Type of Association

The analysis of the social or legal relationships between offenders and victims as a function of the ages of the victims provides important insights into the question: To what extent are young persons of different ages variously at risk from persons to whom they are legally or socially related? The findings given in Table 25.20 provide a breakdown of the types of association between offenders and victims in terms of the ages of the victims. The findings indicate that:

- With respect to offences in which the offender was within the degrees of consanguinity specified in the incest offence in section 150 of the *Criminal Code*, this occurred proportionately more often where the victim was under 16 than where he or she was 16 or older. Over a third of these offences (35.8 per cent) concerned children under the age of 12, and more than half (51.7 per cent) concerned children 12-15 years of age. Only about one in eight offences (12.3 per cent) in which the offender was within the "incest" relation concerned young persons in the 16-20 year age-group.
- An even more marked trend was evident with respect to offenders in the category, "other blood relative". Almost three-quarters (72.2 per cent) of offences by other blood relatives concerned children under the age of 12; 96.2 per cent concerned children under the age of 16. Offences by other blood relatives of victims 16 and older constituted less than one in 26 (3.8 per cent) of all offences committed by this group. Similar trends occurred with respect to offenders in the "guardianship" and "other family member" categories.
- Offences committed by persons in a position of trust to the child occurred most often with respect to children under the age of 12; about six in seven of all offences committed by such persons concerned a child 11 years of age

Table 25.20

Ages of Sexually Assaulted Victims by Type of Association with Suspected Offender

Age of Victim	Type of Association															
	Incest Relationship		Other Blood Relative		Guardianship Position		Other Family Member		Position of Trust		Friends/ Acquaintances		Others Strangers		Total	
	No.	%	No.	%	No.	%	No.	%	No.	%	No.	%	No.	%	No.	%
Under age 7	36	11.4	52	39.1	6	3.4	12	11.3	89	53.3	270	20.9	196	11.1	661	16.7
7 — 11 years	77	24.4	44	33.1	28	15.9	32	30.2	55	32.9	349	27.1	386	21.9	971	24.6
12 — 13 years	59	18.7	12	9.0	32	18.2	20	18.9	10	6.0	204	15.8	212	12.0	549	13.9
14 — 15 years	104	33.0	20	15.0	67	38.1	30	28.3	5	3.0	274	21.3	339	19.2	839	21.3
16 — 17 years	31	9.8	2	1.5	33	18.7	8	7.5	3	1.8	81	6.3	266	15.1	424	10.7
18 — 20 years	8	2.5	3	2.3	10	5.7	4	3.8	5	3.0	111	8.6	363	20.6	504	12.8
TOTAL	315	99.8*	133	100.0	176	100.0	106	100.0	167	100.0	1289	100.0	1762	99.9*	3948	100.0

National Police Force Survey. All children and youths under age 21 who were sexually assaulted (excluding 2060 acts of exposure). Information missing for 195 cases.

*Rounding error.

or younger (86.2 per cent). This dropped off sharply with respect to young persons 12 and older.

- Offences committed by friends or acquaintances of the child also occurred proportionately more often where the child was 11 or younger (48.0 per cent). These persons became much less a factor in relation to victims in the 16-20 age-group.
- The proportion of offences committed by persons in the "other/stranger" category varies appreciably from one age group to another, from a low of 11.1 per cent in relation to victims under age seven to a high of 21.9 per cent in relation to victims between seven and 11 years-old.

The findings clearly show that, in general, young persons were proportionally at greater risk from blood relatives and persons in positions of trust than from other persons. With respect to children 11 years or younger, the proportion in each of these categories is striking:

- 86.2 per cent of all offences committed by persons in a position of trust relative to the child victim concerned children 11 years-old or younger;
- 72.2 per cent of all offences committed by other blood relatives of victims (excluding incest relations) concerned children 11 years-old or younger; and
- 35.8 per cent of all offences committed by persons in an incest relation with respect to the child victim concerned children 11 years-old or younger.

The findings indicate that young children are at greatest risk from persons prominent in their lives, whether they be blood relations, family members or persons in positions of trust (for example, baby-sitters and teachers). In other words, young children are proportionately at greatest risk of sexual abuse from persons to whom they are socially most vulnerable.

Co-residence of Victims and Offenders

The Committee's findings in respect to whether the offender resided in the same household as the victim at the time of the offence strengthen and complement the other analyses undertaken to determine the persons from whom children are at greatest risk from sexual abuse. Overall, in about one in five cases of sexual assault (19.8 per cent) investigated by the police, the victim and the suspected offender lived, shared or were present in the same residence. Girls were over twice as likely (20.8 per cent) to be victims of these types of offences as boys (9.7 per cent).

Of those offences in which the offender and the victim co-resided, in more than one in three (36.1 per cent) the offender was related to the victim within the degrees of consanguinity specified in the incest offence in section 150 of the *Criminal Code*. Other blood relatives accounted for about one in 13 (7.4 per cent) of these offences, and other family members for about one in nine (10.6 per cent). In descending order, the balance of these "co-resident" offences was accounted for by persons in guardianship positions (15.7 per cent); friends or acquaintances of the victim (14.8 per cent); other persons and strangers (13.1 per cent); and persons in positions of trust vis-a-vis the victim (2.2 per cent).

Table 25.21

Co-residence of Victim and Offender by Type of Association

Type of Association between Offenders and Victims	Number of Offences in which Offender and Victim Co-resided	Per Cent
Incest Relationship		
• father	244	
• mother	3	
• brother	27	
• half-brother	10	
• sister	1	
• half-sister	—	
• grandfather	12	
• grandmother	—	
TOTAL	297	36.1
Other Blood Relatives		
• uncle	50	
• aunt	—	
• nephew	1	
• niece	—	
• cousin	10	
TOTAL	61	7.4
Other Family Members		
• adoptive father	12	
• adoptive brother	2	
• adoptive grandfather	1	
• foster brother	1	
• common-law parent	59	
• other	12	
TOTAL	87	10.6
Guardianship Positions		
• step-father	116	
• foster-father	10	
• legal guardian	1	
• employer	2	
TOTAL	129	15.7
Positions of Trust		
• day care worker	—	
• teacher	1	
• youth worker	6	
• group home worker	2	
• baby-sitter	9	
TOTAL	18	2.2

Table 25.21 (continued)

Co-residence of Victim and Offender by Type of Association

Type of Association between Offenders and Victims	Number of Offences in which Offender and Victim Co-resided	Per Cent
Friends/Acquaintances		
• boyfriend	12	
• personal friend	15	
• family friend	52	
• neighbour	5	
• acquaintance	38	
TOTAL	122	14.8
Others/Strangers		
• boarder	32	
• co-resident of group home	2	
• other	57	
• stranger	17	
TOTAL	108	13.1
GRAND TOTAL	822	99.9*

National Police Force Survey.

*Rounding error

Findings on the offences in which offenders and victims co-resided are presented in Table 25.22 in relation to the dimensions of the types of association between them and the ages of the victims. What is apparent from these findings is that children under 16 were proportionately at greater risk from persons with whom they resided than were young persons 16 and older. About seven in eight of these offences (86.8 per cent) concerned a child 15 years of age or younger, while only about one in eight (13.2 per cent) concerned a young person 16 or older. Children under the age of 12 were particularly at risk from blood relatives and persons in positions of trust. The highest proportion of "co-resident offences" occurred in relation to children 14 and 15 years of age (30.3 per cent of the total); the next highest proportions of these offences occurred in relation to children 7-11 years of age (25.8 per cent of the total), children 12 and 13 years of age (18.0 per cent of the total), and children under seven years of age (12.7 per cent of the total).

Table 25.22

Victims and Suspected Offenders Living in the Same Residence by Type of Association and Age of Victim

Age of Victim	Type of Association															
	Incest Relationship		Other Blood Relative		Other Family Member		Guardianship Position		Position of Trust		Friends/ Acquaintances		Others Strangers		Total	
	No.	%	No.	%	No.	%	No.	%	No.	%	No.	%	No.	%	No.	%
Under Age 7	29	10.3	22	36.1	13	15.1	6	4.6	7	38.9	18	14.7	2	3.3	97	12.7
7 — 11 years	63	21.7	24	39.3	22	25.6	27	20.9	6	33.3	33	27.0	23	37.7	198	25.8
12 — 13 years	57	19.7	4	6.5	15	17.4	25	19.4	1	5.6	20	16.4	16	26.2	138	18.0
14 — 15 years	104	36.0	9	14.8	27	31.4	46	35.7	1	5.6	34	27.9	11	18.0	232	30.3
16 — 17 years	28	9.6	2	3.3	8	9.3	20	15.5	3	16.6	4	3.3	6	9.8	71	9.3
18 — 20 years	8	2.7	—	—	1	1.2	5	3.9	—	—	13	10.7	3	4.9	30	3.9
TOTAL	289	100.0	61	100.0	86	100.0	129	100.0	18	100.0	122	100.0	61	99.9*	766	100.0

National Police Force Survey. Information missing for 56 cases.

*rounding error

Summary

1. Victims were more likely to be threatened or forced by offenders less than three years older than they than by offenders either younger than or more than three years older than their victims.

2. Proportionately, more resistance was offered by victims to younger offenders than to offenders more than three years older than their victims.

3. There were no appreciable differences in the nature of the sexual acts committed by offenders either younger, about the same age, or more than three years older than their victims.

4. In reported occurrences involving a single offence, an average of 1.5 sexual acts had been committed against the victim.

5. In about one in seven cases (14.5 per cent), the victim had been induced or forced to perform sexual acts on the offender. Acts of these kind tended to occur more frequently where the offender was well known to the child or held a position of trust to the child.

6. In the vast majority of sexual offences against the child, either the young person was unable to give a legal consent to sexual behaviour, or in the case of older children, resisted the behaviour in question.

   A low proportion of victims (females, 6.1 per cent; males 15.2 per cent) was reported to have "participated willingly" in the sexual act. In the case of male victims in the 14-20 age group, only about one in six (16.8 per cent) was reported to have participated willingly.

7. Excluding offences of indecent act, almost one in four (24.2 per cent) of the sexual offences was committed by persons either prominent in the child's life or to whom the child was particularly vulnerable. Overall, about three in five offences (59.1 per cent) were committed by persons whom the child either knew or was acquinted with.

8. When the less serious sexual acts involving fondling, kissing, thigh intercourse and exposures are excluded, then proportionately the more serious sexual acts were more likely to have been committed by a person whom the child knew or was acquainted with than by a stranger.

Part V

Child Protection Services

Chapter 26

The Child in Need of Protection

The organization of child protection services across Canada ranges from loosely affiliated local or regional children's aid societies to centrally administered services. The distinctive features of each approach evolved from historical precedents that reflected local needs and different philosophies about social policy, about which level of government, municipal or provincial, should assume these responsibilities, and about whether private or public initiative was required to achieve these purposes. Fact-finding on the provision of child protection services in Canada is compounded by the operation of 12 separate jurisdictions (provinces and territories), each with its own child welfare statutes and service programs. There is no listing for the country along uniform lines of the full range of services provided. When the Committee started its review, it found that there was no common definition of child sexual abuse, little documentation of the child protection services provided for sexually assaulted children and no information about whether these services effectively assisted children. There is no documentation for Canada that compares how the sharply different programs which exist may influence the care and protection of sexually assaulted children.

Since the legal jurisdiction for child protection services is a provincial responsibility, and for this reason lay beyond the scope of its mandate, the Committee's review was limited to a consideration of how the organization and operation of these services affect the application and adequacy of protection afforded by the sexual offences in the *Criminal Code*.

In undertaking its review, the Committee received indispensable and effective co-operation from child protection services in all provinces and the Yukon. The extent of this participation in a federally appointed study underscores the nature of the deeply held concerns of child protection administrators and workers in all parts of Canada about the need to understand better the complex dimensions of child sexual abuse and about how these children can be better protected and served. The Committee knows of no precedent where collaborative research along these lines involving provincial child protection services has been undertaken in this country.

In this chapter, a review is given of the statutory definitions of the child in need of protection, the development of the National Child Protection Survey is described and the operation of a number of special service programs is outlined. The issues considered in the remaining chapters in this section of the Report deal with:

1. A review of legislation in relation to the duty to report cases of child sexual abuse. Research findings are given concerning the extent to which cases were reported to registers and the types of cases for which notification was made.

2. The provision of child protection services for sexually abused children documented on the basis of findings assembled by the National Child Protection Survey.

3. A review of research findings concerning the services provided by philosophically different intervention strategies — the child-centred and family-centred approaches — in relation to the protection and assistance afforded by these means for sexually abused children.

Provincial Statutory Definitions

The definition in each provincial Act of "a child in need of protection" establishes the range of situations in which a child may be eligible to receive services from child protection services, and in which these agencies are authorized to intervene in the affairs of the child and his family. Table 26.1 sets out the major elements of risk that accumulatively constitute the definition of a child in need of protection for the purposes of each statute.[1] Categories having equivalent or analogous meanings are grouped together in this synopsis.

In the provincial acts, the concept of "a child in need of protection" is so broadly defined as to render virtually any child living in unsatisfactory domestic conditions or subjected to any form of abuse or neglect, eligible to receive protective services. Each definition contains an "umbrella" category that encompasses an enormous range of situations (e.g., "child living in unfit or improper place/circumstances"; "child whose life, health, morals/emotional well-being may be endangered by the conduct of the person in whose charge the child is"; and "child subjected to abuse"). These broad categories also incorporate concepts such as "morals", "emotional well-being", "unfit", "improper" and "abuse".

The definitions of "a child in need of protection" appear to have been drafted to ensure that, in any conceivable case of child abuse or neglect, there would be some statutory basis for the authorization of intervention. Such legislation confers wide discretionary powers on those persons who must apply the statutes. Protection is afforded families, however, in their right to contest in

Table 26.1

Provincial Statutory Definitions of the Child in Need of Protection

Category of Child at Risk	Province											
	Nfld.	P.E.I.	N.S.	N.B.	Que.	Ont.	Man.	Sask.	Alta.	B.C.	Yukon	N.W.T.
Child who is the victim of sexual assault/exploitation or who is subject to physical ill-treatment through violence and neglect.	X	X		X	X							
Child brought with consent of person in whose charge he is before a court to be dealt with under the act.	X					X	X		X		X	X
Child born to unmarried parents whose mother is unable or unwilling to care for him/delivers him for adoption.		X					X					
Child who refuses or is unable to provide properly and adequately for the health and welfare needs of herself or her child.		X					X					
A child who without sufficient cause is habitually absent from home/school	X	X	X	X		X			X			
Child absent from home in circumstances that endanger his safety or well-being.										X		

Table 26.1 (continued)

Provincial Statutory Definitions of the Child in Need of Protection

Category of Child at Risk	Province											
	Nfld.	P.E.I.	N.S.	N.B.	Que.	Ont.	Man.	Sask.	Alta.	B.C.	Yukon	N.W.T.
Child who leaves a hospital centre or reception centre or foster family without authorization.					X							
Child who leaves/is absent from his home/parents without authorization.		X			X							
Child found begging or receiving charity in a public place.						X			X			
Child forced or induced to beg or do work disproportionate to his strength or to perform for the public in a manner that is unacceptable for his age.		X			X							X
Child committed pursuant to S.20(1) (h) or (i) of the Juvenile Delinquents Act.			X									
Child who, with the consent or connivance of the person in whose charge he is, commits any act that renders him liable to a penalty under any Act of Parliament, or of the Legislature, or under any Municipal By-Law/Child who commits an offence.				X					X			X

Table 26.1 (continued)

Provincial Statutory Definitions of the Child in Need of Protection

Category of Child at Risk	Province											
	Nfld.	P.E.I.	N.S.	N.B.	Que.	Ont.	Man.	Sask.	Alta.	B.C.	Yukon	N.W.T.
Child where the person in whose charge the child is neglects or refuses to provide or obtain proper medical, surgical or other recognized remedial care or treatment necessary for the child's health or well-being, or refuses to permit such care or treatment to be supplied to the child when it is recommended by a legally qualified medical practitioner, or who otherwise fails to protect the child adequately.	X	X	X	X		X	X	X	X	X		X
Child for whom the person in whose custody he is neglects, refuses or is unable to provide the services and assistance needed by the child because of the child's physical, mental or emotional handicap or disability.		X										
Child deserted/abandoned by the person having charge of the child.			X	X		X	X	X	X	X	X	X
Child where the person having charge of the child cannot for any reason care properly for the child/or where that person has died and there is no suitable person to care for the child.	X				X	X	X		X	X	X	X

Table 26.1 (continued)

Provincial Statutory Definitions of the Child in Need of Protection

Category of Child at Risk	Province											
	Nfld.	P.E.I.	N.S.	N.B.	Que.	Ont.	Man.	Sask.	Alta.	B.C.	Yukon	N.W.T.
Child where the person having charge of the child omits to/is unable to control the child/child has serious behaviour disturbances.	X	X		X	X	X	X	X	X			X
Child abused or neglected so that his life/safety or health/well-being is endangered.			X						X	X		
Child deprived of/lacking the material conditions of life appropriate to his needs and to the resources of his family/family is unfit, unwilling or unable to care for him.	X	X	X	X	X		X					
Child whose behaviour, condition, environment or association is injurious to himself or others.	X	X		X			X					
Child subjected to abuse.							X					
Child whose mental or emotional health is threatened by the isolation in which he is maintained.					X							
Child living in a situation where there is severe domestic violence.	X	X		X								

Table 26.1 (concluded)

Provincial Statutory Definitions of the Child in Need of Protection

Category of Child at Risk	Province											
	Nfld.	P.E.I.	N.S.	N.B.	Que.	Ont.	Man.	Sask.	Alta.	B.C.	Yukon	N.W.T.
Child whose life, health, morals/ emotional well-being may be endangered by the conduct of the person in whose care the child is.		X		X	X	X	X	X	X			
Child whose emotional or mental development is endangered because of emotional rejection or deprivation of affection/guidance/discipline by the person having charge of the child.		X				X	X		X			X
Child living in unfit or improper place/circumstances.	X		X	X		X		X	X		X	X
Child found associating with an unfit or improper person.						X			X			X

court any action taken by child protection agencies. Recognition is given to the individual and the unique nature of each family's difficulties since child protection workers may assess all aspects of a family's situation rather than checking for a specific range of prohibited behaviours before directly intervening in the life of a family and the child.

In the definitions of "children in need of protection", sexual abuse receives no statutory identification as a separate kind of risk faced by children, and against which they require protection. Four provincial Acts — those of Newfoundland, Prince Edward Island, New Brunswick and Quebec — cite sexual abuse as part of the definition of "a child in need of protection". In these Acts, however, sexual abuse is not treated as a separate category of harm or danger. Rather, sexual abuse or exploitation is grouped together in these Acts with other forms of abuse, such as physical abuse, physical or emotional neglect, or threatening behaviour.

In the eight jurisdictions where no mention is made of sexual abuse in the definition of children requiring protection, authorization to intervene on behalf of the sexually abused child must be inferred from one of the broad "umbrella" categories of risk (e.g., "child whose life, health, morals/emotional well-being may be endangered by the conduct of the person in whose care the child is").

In provincial child welfare statutes, the range of measures authorized to be taken on behalf of any child deemed to be in need of protection is identical whether the child has been battered, negiected, abandoned, permitted to be absent from school or sodomized. The statutes do not state explicitly that it is part of the mandate of the child caring agencies to protect sexually abused children. The exception is the Quebec Act, s. 23(j) which authorizes Le Comité de la protection de la jeunesse to "promote the protection of children who are the victims of sexual assault or who are subject to physical ill-treatment through violence or neglect."[2]

On the basis of its review, the Committee concludes that the majority of provincial legislatures have not given specific consideration to child sexual abuse in framing their child welfare legislation. Although, the statutes of Prince Edward Island, Quebec, Manitoba, Saskatchewan, Alberta, the Yukon and the Northwest Territories create summary conviction offences for anyone who neglects, abandons, ill-treats or abuses a child in his or her care, none expressly makes an offence of child sexual abuse.

The provincial statutes are of little value in terms of providing any real guidance, or practical assistance to officials responsible for child care and protection, or in specifying clearly the basis upon which decisions are to be made whether incidents of child sexual abuse are to be dealt with under the terms of

child protection legislation or under the sexual offences in the *Criminal Code*. On the basis of the findings given in the following chapters in this section of the Report, the Committee concluded that it is the organization of services not the specific wording of any particular provincial statute, that affects the provision of assistance to sexually abused children. In this regard, sharply contrasting approaches have evolved in the administration and operation of different child protection services which have markedly different consequences in relation to affording assistance and protection for sexually abused children.

The Committee reviewed extensively whether the statutory authority under which child protection services function should specify child physical and sexual abusive investigation responsibility in addition to the broad concepts of neglect and protection. As documented in this Report, **there can be no doubt that more adequate investigation of cases of child sexual abuse is required. The clear specification of the types of investigative responsibility for physical and child sexual abuse would accord with and promote the changing mandate responsive to public expectations.** Accordingly, on the basis of the findings presented concerning the provision of child protection services, **the Committee recommends that this is an issue requiring full review and, if deemed appropriate, action at the provincial level.** Because the investigative practices followed have crucial and profound consequences for the protection and well-being of physically and sexually abused children, the Committee believes that these matters should not be left solely to well intentioned but variable discretion, but that the basic principles and social policies involved warrant specification in legislation.

Development of National Survey

As it started its review, the Committee was told by a number of experienced case workers that the records of child protection services were an inappropriate source to draw upon to document the experience of sexually abused children and the services provided for them. It was reported that most case records were incomplete, that there was no uniform definition of child sexual abuse, and that social workers were too busy to provide information by means of a standard protocol. The Committee was also bluntly told in some instances that the needs of these children were already well known and that more resources, not research, were needed. One senior official characterized the findings that might be obtained as "totally irrelevant" and was also concerned that the results might spark a "backlash of strong criticism" from the media and the public. The concerns that a national survey could not be undertaken were unfounded.

The Committee inquired of all provincial child protection services about the feasibility of undertaking a survey of services provided to sexually abused children. Collaborative research was initially started in three provinces, and subsequently, all provinces joined the study which became a National Child Protection Survey of Child Sexual Abuse.

Basic information for certain items was obtained in all jurisdictions. The survey relied on three sources of information. These were: the findings obtained by means of the child protection research protocol on child sexual abuse in eight provinces and the Yukon; an adaptation of the Committee's research protocol used in a province-wide sampling of cases known to child protection workers undertaken by Le Comité de la protection de la jeunesse in Quebec; and information obtained by means of an abbreviated protocol from cases listed in the Child Abuse Registry maintained by the Ontario Ministry of Community and Social Services. In the case of the survey conducted in Quebec, half of the items used in the research protocol corresponded to questions listed in the survey undertaken in eight other provinces. None of the 51 Children's Aid Societies in Ontario found it feasible to participate directly in the survey. However, with the full co-operation of the Ontario Ministry of Community and Social Services, information was drawn from the provincial Child Abuse Registry.

In order to provide the broadest coverage possible of the findings from the three sources, information from each of the surveys was combined, wherever this proved to be feasible. When the findings are referred to, the following code is used.

A — findings from all sources

B — findings for eight provinces, Quebec and the Yukon

C — findings from eight provinces, the Yukon and Ontario

National Child Protection Survey — findings from eight provinces and the Yukon.

The Committee acknowledges the participation in the survey of:

- Newfoundland Department of Social Services
- Prince Edward Island Department of Health and Social Services
- Nova Scotia Family and Child Welfare Association
- New Brunswick Department of Social Services
- Le Comité de la protection de la jeunesse (Quebec)
- Ontario Ministry of Community and Social Services
- The Children's Aid Society of Winnipeg and the Winnipeg Regional Office, Manitoba Department of Community Services and Corrections
- Saskatchewan Department of Social Services
- Alberta Department of Social Services and Community Health
- British Columbia Ministry of Human Resources
- Yukon Department of Health and Human Resources

Unlike the findings obtained in the Committee's national surveys of police forces and hospitals where in each instance information was obtained about all cases known to participating programs, the findings assembled in the National Child Protection Survey varied with respect to whether all, a sample, or a

selected number of cases known to child protection workers were documented. All known cases were included in the surveys undertaken in four provinces. In one province, Quebec, a sample was drawn of cases known to child protection workers in all parts of the province. Elsewhere, cases were included representing specific rural and urban regions of a province. As a result of how these findings were obtained, overall, they do not constitute a sample but rather a sizeable number of cases (totalling 1418) of young victims assisted by child protection services in all parts of Canada.

In most instances, child protection workers were asked to review cases known to them, and on this basis, to complete the research protocols themselves or with assistance from a researcher. In a few provinces, records were the initial source of information, and in these instances, the findings were reviewed for completeness by the professional staff of the agencies.

Despite the limitations noted, what is unusual about the findings obtained by the Committee is the size of the group of children whose experience was documented, the detailed nature of much of the information obtained, and the fact that findings were assembled from all provinces and the Yukon. Until more complete information is available along these lines, the Committee accepts the findings of the National Child Protection Survey as the basis for reaching its conclusions concerning the provision of child protection services for sexually abused children.

Before presenting findings from the National Child Protection Survey which dealt with the experience of services provided by officially authorized agencies, a synopsis is given of the operation of a number of special community programs established in different parts of the country.

Special Community and Social Services

In the course of its review, the Committee learned of a number of innovative programs that had been developed for sexually abused children. What is striking about these programs is their breadth and diversity. In some instances, these activities are subsumed within general child protection services, while in other cases, such initiatives have come directly from the community to serve these children. The examples given here illustrate trends that are emerging across Canada.

Associations of Victims

In several regions of Canada, groups or associations have been formed to help victims of sexual assaults, to provide counselling and to recommend the better provision of services. An example of such an association is the Sexual Abuse Victims Anonymous Association (S.A.V.A.) of British Columbia based in Campbell River. This voluntary community association, whose members are former incest victims, documents incest cases, offers peer counselling, makes

referrals and mounts public education programs (e.g., workshops, media programs and personal safety courses for children in schools). S.A.V.A.'s therapy sessions are designed to overcome incest-related trauma and to work towards the long-term rehabilitation of incest victims through the use of cathartic techniques that foster self-awareness, improve self-esteem and break down harmful rationalization on the part of the victim. Written assignments are used to assist the victim in coming to terms with having been sexually abused.

Where incestuous behaviour still occurs, the program aims at breaking down the offender's position of dominance within the family; support and advocacy are provided to victims as an encouragement to lay charges. S.A.V.A. members accompany victims to court in order to provide moral support and assistance. Where members are suicidal or severely depressed, formal contracts are used which bind them to contact other members before attempting desperate actions.

Another example of such an association is the Parents Anonymous group established in 1978 by the Social Services Council for Greater Saint John. The members of Parents Anonymous maintain a 24 hour telephone service providing counselling to parents under stress who fear that they may mistreat their children as an outlet for their anxieties. Parents Anonymous also sponsors "Parents Helping Parents" meetings offering peer support to troubled parents.

The sharp increase in the number of associations of victims from coast to coast indicates that some sexually assaulted persons seek assistance from persons who themselves may have been victims of sexual offences. Several of these groups have been established in liaison with public services and receive either input from professional staff or public funding for some of their activities.

Advocacy Groups

In several provinces, associations have been formed to represent the interests of children and to serve as advocates for their better protection. The Saskatchewan Society for the Prevention of Cruelty to Children is an organization seeking to create a province-wide outlet for the involvement of concerned citizens in providing for the well-being of children. The S.S.P.C.C. has provided advocacy for children in courts and before various official bodies, has championed the cause of children in the media, has promoted professional and public awareness of all forms of child mistreatment and has sponsored Parents Anonymous groups. The organization has also produced materials for public and professional use and a bi-weekly newsletter. In 1982, the Society convened a conference that considered all aspects of the care of sexually abused children.

In Ontario, Justice for Children is a non-profit organization which seeks to advance the cause of child-oriented law-reform. One of the organization's concerns is with the legal issues surrounding incestuous assault. The group also provides a public information service dealing with issues that affect children.

Sexual Assault Centres

Rape crisis centres (subsequently retitled sexual assault centres) were initially opened in Vancouver and Toronto in 1974. Since then, approximately 50 have been established across Canada. Some centres are located in hospitals or women's centres, while others operate independently. Most of the centres are staffed by volunteers whose work in some instances is complemented by paid professional staff.

The major function of the sexual assault centres is to provide immediate and direct assistance to victims. Several national conferences have been held and a National Association has been established whose functions include: assistance to new centres; collection of national statistics on sexual assault; service as a national information clearinghouse; training volunteers; preparation of briefs related to law reform; and production of handbooks on child sexual abuse.

Several centres have mounted services specifically intended for sexually abused children. An instance of this is the program developed by the Sexual Assault Centre of Edmonton. The Centre's services include: a paediatric examination; a social work assessment; psychological testing; and a psychiatric assessment (where required). The Centre's procedures involve setting up for sexually abused children and their families treatment plans that may entail: family counselling; teaching appropriate parental expectations and attitudes; psychotherapy; play therapy; and other types of treatment deemed necessary. In addition to providing a range of counselling, a telephone hotline, and support services, the Edmonton Centre publishes a series of leaflets concerning sexual offences against children.

The Coalition of British Columbia Sexual Assault Centres has sponsored the formation of Taking Responsible Action for Children and Youth (T.R.A.C.Y.). Among T.R.A.C.Y.'s anti-child abuse activities is a "block parents" training program. T.R.A.C.Y. also conducts child abuse-related workshops for teachers and social workers. The agency's Preventive Education Task Force provides seminars for school children between kindergarten and third grade. The seminars familiarize children with different kinds of touching; they inform children that certain sorts of touching are inappropriate, that their bodies are their own and that they do not have to accept being touched by adults in these ways. Similar seminars are being held elsewhere in the country.

Telephone Hotlines

An abiding dilemma for child protection services is how to be accessible and to reach out quickly and effectively to abused children. An unusual outreach program that was established in 1979 by the British Columbia Ministry of Human Resources consists of a province-wide, 24 hour telephone service that receives reports of child neglect, abuse and other crises. Calls received between 8:30 a.m. and 4:30 p.m. are routed to the nearest appropriate offices

of the Ministry; during off-hours, the calls are directed automatically to the Vancouver Emergency Services Unit which has a staff of 60 crisis intervention workers and maintains liaison with the police. The Zenith Hotline is staffed by workers from the Ministry's Family Team and Youth Team. The Family Team is responsible for responding to all child welfare emergencies and adult or family crises, while the focus of the Youth Team is on troubled teenagers.

The goal of the Zenith Hotline is to reach into the community and find those victims whom the child protection system may otherwise fail to identify. The urgency of each call is assessed and calls are then referred on to the most suitable local agency or resource.

The Zenith Hotline operates as a comprehensive referral system designed to put victims and their families in contact with the most appropriate services and agencies with a minimum of red tape and delay, and to assure that follow-up and immediate investigation take place in cases of serious abuse and neglect. Its purpose is to complement the routine work of the Ministry's child protection workers. Following the precedent established by British Columbia, some other provinces have established their own hotlines.

Co-ordinating Committees

The 1971 Report on *Child Abuse in Nova Scotia* noted that while there was insufficient co-ordination between related services, there was a strong and growing recognition that interdisciplinary co-operation was required to deal effectively with these problems.[3] During the intervening years, co-ordinating committees concerned with child abuse have been established in all parts of the country, most commonly, in larger urban centres. The Committee learned of the operation of a number of informal liaison groups in smaller communities which consisted of child protection workers, the police, physicians, and other lay and professional groups. In these instances, information about sexually abused children was shared between services and decisions were reached for care and appropriate follow-up.

In addition to these informal arrangements, several other means intended to co-ordinate services have evolved. These include: multidisciplinary service teams, reviewed elsewhere in the Report; and both locally and provincially established committees intended to co-ordinate child abuse services.

An example of a locally established co-ordinating committee is the Edmonton Committee on Child Abuse and Neglect. The Committee's members include representatives from: the Public School Board; the Separate School Board; Social Services; the Police Department; and Public Health Services. The activities of this Committee relate to: the co-ordination of resources; consultation; encouraging the development of a team approach to child abuse; fostering better communication between agencies that deal with the problem; and providing liaison with the Child Welfare Branch of the Alberta Department of Social Services and Community Health.

A somewhat comparable program has also been developed in Calgary. In conjunction with the Alberta Children's Hospital, the Calgary Child Sexual Abuse Committee was established as a result of a conference convened in 1980 to review how more effective care could be provided. Following this meeting, working sub-committees were set up (e.g., the Needs, Resources and Planning Sub-Committee whose seven members presented an extensive, provincially funded report in 1982 advocating the establishment of a specialized multidisciplinary core team to deal comprehensively with child sexual abuse in Calgary). In 1981, the Committee received funding from Alberta's Department of Social Services and Community Health to establish a Child Sexual Abuse Treatment Centre.

In other jurisdictions, provincial child protection services have established co-ordinating committees concerned with child abuse. For instance, Ontario has developed a large number of pilot projects, multidisciplinary bodies, educational activities and services focussing on child abuse. In 1981, 53 planning and co-ordinating groups concerned with child abuse were operating in 40 Ontario communities. Parents' Anonymous Groups had been formed in 17 areas; 48 interdisciplinary treatment or community access teams were functioning in 33 localities.

A somewhat different approach has been adopted in New Brunswick where the Department of Social Services has established a Community Committee Program in order to ensure that the expertise associated with multidisciplinary teams was made available to each area of the province. The purpose of each Committee is to act as an adjunct to the Department of Social Services in the detection, prevention and treatment of child abuse, and in educating the public about the problem. At least one Committee is formed in association with each of the Department of Social Services' six area offices. Each Committee is under the direction of the Area Administrator of Personal and Social Services responsible for the area office with which that particular Committee operates. The Area Administrator, in turn, reports to the Director of Personal Social Services on the activities of the Committee(s), and makes recommendations regarding its functions, effectiveness, composition, frequency of meetings and special areas of concern. The Committees draw their membership from a number of core disciplines.

The Committees are not involved in case management. However, they seek to assure that information concerning a probable need for services is brought to the attention of the proper investigating authority. The Committees have participated in active programs for encouraging teachers and other school personnel to report suspected cases of abuse; accordingly, materials for teachers have been published which outline the indicators of abuse, interviewing a child in order to gain verification and procedures for reporting the suspected abuse.

Residential Facilities

As part of their provision of services for abused children, all provincial child protection services provide residential facilities for their temporary placement. Some of the facilities which include group homes, hostels and halfway houses have been developed specifically for the placement and treatment of such children. An example of this type of resource is the Mitchnick Group Home in Calgary, a small centre (accommodating up to six residents) which caters specifically to children with histories of neglect, abuse or sexual abuse. The children served by the facility range from 13 to 17 years of age. The Home's program features community exploration trips and in-house lessons on topics such as sex education.

Across Canada, a network of Transition Houses for physically and emotionally abused women has been established. Most of these houses were established by private societies and develop their own programs. One such group home, located in central Surrey in British Columbia, caters specifically to sexually abused girls. Another house is operated by the New Hope Therapeutic Society and has residents consisting exclusively of female incest victims. Recreational facilities are provided to make the resident's stay more pleasant and a daily routine is provided (e.g., school, household chores) in order to reinforce a home-like sense of normalcy. Weekly group therapy sessions are held for residents, as well as sessions for persons living outside the facility, including victims, perpetrators and family members.

School Education Programs

The inclusion of sex education and family planning in the curriculum is a sensitive issue for school boards. Despite the difficulties faced in teaching such topics, a number of programs have been started across the country intended to provide parents and children with information about the signs of child abuse. A number of the programs initiated by local police forces deal with how children should react to various situations involving strangers.

Instances of two educational programs dealing more broadly with child abuse are ones in Vancouver and Saskatchewan. Since 1976, a high school education program has been run in the Lower Mainland under the joint sponsorship of the Junior League of Vancouver, the Ministry of Human Resources' Child Abuse Team and its Volunteer Services. The project was designed to supply students with information regarding abuse and the resources available to them and their parents.

The Saskatchewan Department of Social Services, recognizing that the province's schools constitute a potentially invaluable resource for the prevention and detection of child abuse, have encouraged them to adopt some of the following measures:

1. Offering parenthood, child care and family living courses.

2. Assigning a guidance counsellor or a teacher as a liaison, receiving and communicating reports of abuse to the appropriate social service in the community.

3. Promoting teacher awareness of the signs of child abuse.

The Saskatchewan Federation of Home and School Associations established a special child abuse project designed to improve the awareness of child abuse in the province among local Home and School Associations and members. The project has also encouraged the Association to create volunteer programs to educate parents about abuse.

Professional Education Programs

Several provincial programs, such as the Division of Child Welfare of the Newfoundland Department of Social Services, have engaged in a variety of activities to educate professionals and the public about child abuse. In the Newfoundland program, seminars have been held across the province. Video presentations have been produced that offer information to parents, teachers and doctors on the prevention, detection and reporting of child abuse. The Division also has prepared and distributed a variety of pamphlets concerning issues related to child abuse.

In Nova Scotia, the Family and Child Welfare Division of the Department of Social Services has been active in developing an educational program focussing on child abuse. In 1979, an information kit was prepared and distributed to all schools, universities, public health units, police departments, hospitals and day care centres in the province, as well as to selected professionals involved with children, and clergy. The Department has co-sponsored a seven-part series of audio-visual presentations on "Violence in the Family". The series was broadcast on cable television community channels; one third of the programs concentrated specifically on sexual abuse. Other educational activities have included in-service workshops on child abuse for teachers and nurses.

The Saskatchewan Department of Social Services has sponsored a series of activities to improve public and professional education concerning child abuse, including a media campaign, and training programs for child protection workers, law enforcement personnel, teachers and health workers. The Department produces a booklet of Guidelines for the health professions to increase their detection and reporting of child abuse.

In Quebec, Le Comité de la protection de la jeunesse has prepared announcements about child sexual abuse for radio and television. One announcement noted that during the previous year about 1000 cases of child sexual abuse had been reported to child protection services. Listeners were told that they should report cases to the local Director of Youth Protection Services, or that they should encourage the victims to do this themselves.

Le Comité has also prepared a leaflet for sexually abused children which asks them to seek help from a trusted adult. Entitled *Les abus sexuels ça va mieux quand on en parle!*, the leaflet seeks to reassure the child that telling a teacher, doctor or child protection worker will not involve the breaking up of the child's family. A telephone number which can be called without charge is given in the leaflet.

Standard Reporting Procedures

In recent years there has been a marked shift in the recognition of the need to establish guidelines for the reporting of cases of child abuse. Several provinces have issued such guidelines, and an example is provided by the Manitoba Department of Community Services and Corrections which has prepared a series of protocols on child abuse, its definition and detection, as well as a description of reporting procedures. A specialized protocol was developed for both the teaching and medical professions, while a general one was prepared for members of other professions. It was intended that these handbooks would instill the knowledge and motivation required to increase the professional reporting of child abuse. The protocols were drafted by the Provincial Advisory Committee on Child Abuse, an organization representing provincial and private social work agencies, health and law enforcement.

The development of general guidelines on child abuse is usually a first step towards establishing detailed procedures for professionals working with sexually abused children. Two such programs have been initiated in Ontario. In January, 1981, a standardized forensic sexual assault evidence kit was made available to hospitals across Ontario. The kit was developed by the Provincial Secretariat for Justice in conjunction with: the Ministry of Health; the Centre of Forensic Sciences; the Niagara Committee Against Rape and Sexual Assault; the police; Crown attorneys; rape crisis centres; and physicians. The kit incorporates a colour-coded, step-by-step set of procedural guidelines to assist hospital personnel in collecting and properly identifying evidence.

The Provincial Secretariat for Justice also distributes an instructional videotape intended to familiarize doctors and nurses with the proper use of the evidence kit and with the physical and emotional needs of victims. The evidence kit was created to foster a satisfactory standard of examination and testing for proof of sexual assault across the province. The new procedures were designed to assure that the analysis of evidence would be conducted at the facility possessing the greatest expertise and best resources for such purposes: the Centre of Forensic Sciences. Finally, the use of the kit was intended to guarantee that the medical proof assembled in each sexual abuse case complies with the rules and technicalities of the law concerning the admissibility and sufficiency of evidence. In 1983, a sexual assault evidence kit specifically designed to meet the needs of children and youths was being developed by the Secretariat.

Research

Most service programs have not undertaken or published research concerning the identification of child sexual abuse and the provision of services to victims. The notable exceptions are: the surveys of sexual assaults by the Winnipeg Rape Crisis Centre and the Ontario Sexual Assault Centres; and the projects of the United Way of the Lower Mainland in British Columbia.

The most extensive research by any community association or provincial child protection service dealing with child abuse has been undertaken by Le Comité de la protection de la jeunesse in Quebec. Since its inception in the mid-1970s, Le Comité has completed several major investigations concerning the situation of sexually abused children, the harms incurred and the services provided on their behalf. These significant documents are unique for Canada in terms of their scope and their implications for how better protection might be afforded for sexually abused children. That they have been undertaken in conjunction with the ongoing provision of services underscores the feasibility and need for this type of collaboration. Such research may be critical of deficiencies which may otherwise not be brought to attention, or whose extent is unknown. In these respects, the child protection research of sexually abused victims for Quebec has entailed much courage and foresight.

Emerging Trends

Considerable variation has characterized the development across Canada of special services for abused children. In some areas there is a clustering of innovative initiatives emanating from the public and private sectors. Elsewhere, little attention has been paid to the problem of child sexual abuse and no resources have been tailored to meet the problem. This situation stems from: a philosophy that general rather than special services are warranted; the non-recognition of these problems; a shortage of staff and resources; and the absence of persons sufficiently trained or experienced to deal with these issues.

The current acceptance of an interprofessional approach to child protection has arisen from a realization that the different forms of child abuse are too complex to be understood and handled entirely within the conceptual confines of a single discipline, and that the victim's needs overflow the boundaries of the services which the individual professions can provide. This shifting philosophy of providing services is epitomized by the move towards multidisciplinary participation in research planning, policy development, case investigation, consultation and management, and treatment of the victim, offender and family. Co-operation between members of different professions tends to occur in either of two settings: in hospital-based teams, or among organizations at the community level. The former resources are typified by teams functioning in Sainte-Justine Hôpital in Montreal and the Children's Hospital of Winnipeg, while the latter are exemplified by New Brunswick's Community Committees. Hospital teams function to perform a remedial role, that is, to concentrate most of

their efforts on diagnosis and treatment in suspected or confirmed cases of child abuse.

There is also a trend towards acknowledging that the perspectives of a number of disciplines must be taken into account if there is to be a valid assessment of the resources, programs and services required in any given locality. Experts in one field may be aware of problems, needs and pitfalls with which representatives of other disciplines are unacquainted. A consensus is beginning to emerge that pooling the diverse insights of these experts serves to maximize the chances of creating a comprehensive, truly effective range of services.

All provinces have developed policy manuals or guidelines for the use of professional workers dealing with abused children. These guidelines range in explicitness and detail from brief statements of policy concerning the appropriate responses by workers to situations encountered in the field to complete descriptions of procedures to be employed, standards to be maintained, definitions of relevant terms in the authorizing legislation and purposes and goals of treatment. The purpose of these materials is to foster consistency in service delivery in every part of a province and to establish a minimum standard of care available to children.

While most of the recent developments occurring in the provision of services for abused children represent a heightening of awareness and a strengthening of effort, there are still omissions in service. These problems include: the duplication of effort; an absence of effective co-ordination between service programs; and insufficient evaluation of whether policy initiatives, guidelines and programs are actually working and whether they tangibly benefit children. Crucial to the effective operation of these special programs intended to protect abused children is sufficient information about abused children, the problems that they experience and the benefits gained from different intervention strategies. In the Committee's judgment, the information that is available for Canada on these matters is insufficient and fragmentary.

In undertaking its mandate, the Committee was afforded an unusual opportunity to learn of the work of a number of innovative programs providing care for abused children across Canada. Possibly because of the size of the nation, the accepted principle of using two official languages and the responsibility for child protection services falling under the jurisdiction of the provinces, the Committee found that the activities of many of the programs were unknown in other parts of the country, and often, elsewhere in the same province. Instead of looking at precedents that had evolved in other provinces, and drawing upon this experience, there was a widespread predilection to assume that such developments did not exist, or to look abroad for consultation about new developments. In the Committee's judgment, the numerous developments that have evolved and that are emerging in Canada concerning all aspects of child abuse, including sexual offences against children, would be considerably strengthened by the more extensive sharing of this experience.

References

Chapter 26: The Child in Need of Protection

[1] The provincial child welfare legislation reviewed here includes:

(i) Newfoundland. *Child Welfare Act*, 1972, S. Nfld. 1972, Act No. 37;

(ii) Prince Edward Island. *Family and Child Services Act*, S.P.E.I. 1981, c. 12;

(iii) Nova Scotia. *Children's Services Act*, S.N.S. 1976, c.8;

(iv) New Brunswick. *Child and Family Services and Family Relations Act*, S.N.B. 1980, c. C-2.1, (proclaimed in force effective September 1, 1981);

(v) Quebec. *Youth Protection Act*, R.S.Q. c. P.-34.1;

(vi) Ontario. *Child Welfare Act*, R.S.O. 1980, c. 66;

(vii) Manitoba. *Child Welfare Act*, S.M. 1974, c. 30;

(viii) Saskatchewan. *Family Services Act*, R.S.S. 1978, c. F-7;

(ix) Alberta. *Child Welfare Act*, R.S.A. 1970, c. 45;

(x) British Columbia. *Family and Child Services Act*, S.B.C. 1980, c. 11 (proclaimed in force June 1, 1981);

(xi) Yukon Territory. *Child Welfare Ordinance*, R.O.N.Y. 1971, c. C-4;

(xii) Northwest Territory. *Child Welfare Ordinance*, R.O.N.W.T. 1974 c. C-3.

[2] Quebec. *Youth Protection Act*, *supra*, s. 23(j).

[3] Fraser, F.M., J.P. Anderson and K. Burns, *Child Abuse in Nova Scotia*, Halifax, 1973. (mimeo, 295 pages).

Chapter 27

Duty to Report

In this chapter, the two main questions considered are: "Who is responsible for supplying information that a child has been sexually abused?" and "What is done with the information after it is received?" The former question leads to a consideration of the abuse reporting provisions in provincial child welfare acts, while the latter necessitates an examination of the provinces' central child abuse registers.

Provincial Statutory Reporting Requirements

Generally speaking, our legal system tends to eschew laws which create a positive duty for one person to aid another (i.e., "good Samaritan" laws). The standard exception occurs when positive duties are established which apply to persons between whom there exists a special relationship (e.g., in ss. 197-201 of the *Criminal Code*). It may be argued that a special relationship exists between children and society at large. The existence of this relationship is indicated by the special legal status which traditionally has been afforded children, by the existence of statutes designed to promote the welfare of children, and by society's establishment of special institutions and agencies specifically for the purpose of protection and caring for children. With respect to these societal concerns, the child welfare legislation of each province and of the Yukon Territory establishes that reporting child abuse and neglect is the responsibility of every person. While the wording varies from statute to statute, the relevant provisions effectively obligate everyone to report who suspects, or has reason to suspect, that a child is in need of protection or protective guardianship, is neglected, or that the security or development of the child is in danger (as those several terms are defined in each statute). In addition, the Acts of New Brunswick, Quebec, Ontario and Manitoba contain separate provisions requiring persons to report whose reasons for suspecting a child to be in need of protection arose in the course of their professional or official activities (in Saskatchewan, a similar provision applies only to peace officers). There is no requirement to report under the Northwest Territories' Child Welfare Ordinance. In every jurisdiction (other than the Northwest Territories), the reporting requirement transcends traditional professional privileges, except for the solicitor-client privilege in some provinces.

In Manitoba, Saskatchewan, Alberta and British Columbia, there is no statutory provision for penalizing persons who fail to report a child in need of protection. (However, all provinces have a general statutory provision containing a penalty for persons infringing a provincial statute). In Ontario, there is no specific penalty for private persons but a fine of up to $1000 is provided in the case of non-reporting professionals. The maximum penalties provided for in other jurisdictions are: Prince Edward Island, $300; Quebec, $500 for an individual and $1000 for a corporation; Yukon Territory, $500 or six months' imprisonment or both; Newfoundland and New Brunswick (for non-reporting professionals), $1000 or six months' imprisonment or both; Nova Scotia, $1000 or one year imprisonment or both.

Concerning the penalties for non-reporting, the issue must be addressed of whether such sanctions serve any function beyond a purely symbolic one. Only two instances are known in Canada in which a person has been charged with failure to notify authorities of a suspected case of abuse.

Society's use of sanctions is intended to serve at least two distinct ends — those of education and deterrence. With respect to the former, it has been noted that:

> The purpose of such legislation may be to educate, direct and reinforce good intentions, subject perhaps to an occasional symbolic or admonitory prosecution to keep professionals alert to their responsibility. News of proceedings would be circulated in professional journals, and the requirement of the law would thereby be emphasized.[1]

As for their deterrent function, penalties may dissuade persons from keeping silent about suspected abuse cases; the shared reluctance of professionals and laymen to incur legal sanctions would suffice to counter-balance their reluctance to entangle themselves with the criminal justice or child welfare system and to gain the possible opprobrium of relations, friends or neighbours. Penalties possess the potential to educate and deter the general public no less than professionals.

Society's concern must be with finding ways to assure that child sexual abuse is reported with greater regularity and reliability. Children are less able than most persons to speak out about the abuses they sustain; some are too young or too incapacitated to be verbal, some are handicapped by fear or ignorance, and some are bound by a desperate love to their abusive families. Adults must provide information that children cannot.

A further question arises as to whether non-reporting professionals should be subject to more severe penalties than non-reporting laymen. The argument in favour of such a differentiation would assert that professionals occupy a special position of public trust and responsibility, that they are relied upon by others, and that they are expected to adhere to ethical codes more rigorous than those which guide the conduct of ordinary persons. Thus, a professional person's dereliction of a vital public duty would be more blameworthy than a layman's. Moreover, given their education and training, and the amount of

contact that many of them have with children, professionals may be in a better position to observe and identify cases of child abuse than any other group or class within society.

There are competing ethical concerns that tend to dissuade professionals — especially physicians and lawyers — from reporting suspected or known cases of physical and sexual abuse. There can be no doubt that most professionals are very serious about their duty of non-disclosure and are inclined to safeguard the rights of their clients to keep confidential any statements made to them in the course of their professional relationships.[2] Another contentious issue is that of whether the solicitor-client privilege should take precedence over the duty to report. There can be no doubt that the solicitor-client privilege represents one of the fundamental safeguards of our system of administering justice. The decision as to whether the importance of that safeguard is outweighed by the need to maximize the protection extended to children is one that cannot be made on any firm or objective basis.

The need arises to protect two virtually indispensable, but nonetheless incompatible, interests. Between these two interests a choice must be made — a choice which will depend on the priorities and values of each set of provincial legislators. In Prince Edward Island, New Brunswick, Quebec, Ontario and British Columbia, the decision has been to preserve the privilege; in other relevant jurisdictions, it has been determined by statute that solicitor-client privilege — like the other professional privileges — must yield to the duty to report.

Another means by which legislators have attempted to encourage reporting has been to establish statutory immunity from civil liability for those persons who inform the proper authorities of their reasonable suspicions that a child has been abused. The child welfare legislation of Newfoundland, Nova Scotia, Ontario, Manitoba, Alberta, British Columbia and the Yukon protects the reporter from liability, except where the report is made maliciously or without reasonable and probable grounds (or cause). In Saskatchewan, the protection applies to all reporters save those persons whose reports are false and are made maliciously. In New Brunswick, immunity is extended to those persons who report in good faith, and similarly, the Quebec Act provides that no person shall be prosecuted for acts done in good faith. In Prince Edward Island, liability is precluded for those persons whose reports are based on reasonable and probable cause.

In the National Child Protection Survey, about one third (36.7 per cent) of the mothers of victims were the first person to know of the sexual abuse. Others in the family who were first to know about these incidents were: sister (8.7 per cent); other family member (7.1 per cent); brother (4.3 per cent); and father (1.4 per cent). If the offender was part of the victim's family and in situations where the mother had known about the offence (56.6 per cent), about half had not reported it to the police (48.3 per cent); to child protection services (45.5 per cent); or to anyone else (43.7 per cent).

Findings for the fathers indicate that if he knew of the offence and if the offender was part of the victim's family, the father reported the offence to the police in 0.9 per cent of all the cases; to the child protection agency in 1.0 per cent of the instances; or to anyone else in 0.5 per cent of the cases. The responses for the fathers were either inapplicable or unreported in 90.6 per cent of the cases.

The findings show clearly that many parents of victims served by child protection services often did not feel the necessity of or comfortable with reporting to authorities. The major reasons cited by child protection workers why mothers had not reported incidents which they had known about were:

Fear of or coercion by offender	19.4%
Fear of the law and social services	18.9%
Fear of economic and psychological consequences	17.0%
Disbelief that the incident had occurred or that it was an offence	14.9%

As documented in Chapter 7, *Dimensions of Sexual Assault*, one in four of the cases involving sexually abused children known to agencies had been initiated by victims or family members on their behalf. Other referrals of these cases were made respectively by: school staff; physicians; other health workers; police; and rape crisis/sexual assault centres. Information from the Quebec Child Protection Survey confirms this pattern of reporting, with the police being the highest reporters (17.1 per cent) to the Quebec Director of Youth Protection; "professionals" were the next most frequent reporters (15.6 per cent), followed by mothers (9.9 per cent) and the victims themselves (6.5 per cent).

The findings of the National Population Survey found that few persons who had been sexually assaulted as children had contacted child protection services nor had such referrals been made on their behalf. Most of the victims who had sought assistance from official agencies had initially turned to physicians, hospitals and the police. When the findings of the national surveys of police forces and hospitals are considered, it is evident that a sizeable proportion of sexually assaulted children served by these services had not been referred to child protection services.

Of medically examined patients whose experience was documented in the National Hospital Survey, three in five (59.7 per cent) had involved contacts with child protection services. Child protection workers themselves had initiated about one in five (22.7 per cent) referrals of patients examined at hospitals. Of the remainder of the patients who had not been referred to hospital by child protection workers, referrals to these services were subsequently made in about a third of the cases. Of the referrals initiated by child protection services, these workers had accompanied about two in five of the victims to hospital.

The findings of the national surveys show that in relation to the average length of time taken by victims to contact helping services, or for these contacts

to be made on their behalf, about three in five cases investigated by the police were reported within 24 hours and about half of the patients examined at hospitals obtained care within a day. In contrast, only one in five cases served by child protection workers came to their attention within 24 hours of the assaults having been committed, and for one in three cases, over a year had passed before these services had been notified or learned of the incidents (see Chapter 7, *Dimensions of Sexual Assault*).

The concept of crisis intervention suggests that assistance provided in relation to maladaptive functioning is likely to be most effective when it is provided immediately following a crisis or a harmful event. The gap which occurs between the occurrence of sexual assaults against children and when these cases become known to child protection workers may seriously dissipate the likelihood of their being able to assist them effectively.

On the basis of the findings of the national surveys, **the Committee reaches the inescapable conclusion that the process of referral envisioned by provincial legislators and relied upon by child protection services is operating randomly and inefficiently**. Public and professional ignorance about the duty to report may well be one culprit. Lack of faith in the ability of child protection services to deliver real aid to abused children and their families may be another source of the problem. **It is evident that child protection services are neither extensively turned to directly by sexually assaulted victims nor do they receive referrals on a sizeable proportion of cases known to the police or hospitals**.

Child Abuse Registers

The central child abuse registers are files containing vital information concerning child abuse cases occurring within a given province. Registers, or analogous record-keeping systems, are authorized by the child welfare legislation of eight provinces: Newfoundland, Nova Scotia, Quebec, Ontario, Manitoba, Saskatchewan, Alberta and British Columbia. Rather than legislating the establishment of a single, central register, Prince Edward Island's *Family and Child Services Act*, S.P.E.I. 1981, c. 12 s. 45(2)-(3) requires individual care-providing facilities to maintain registers containing the case histories of children receiving services, recorded in a manner specified by regulation. Child welfare legislation in New Brunswick, the Yukon and the Northwest Territories contains no provisions for establishing registers.

Each register receives its information on standardized forms from the child protection services within that province. The nature and degree of detail of the information recorded varies from province to province. For instance, British Columbia's register uses brief reporting forms on which a child protection worker can record a limited number of basic facts about a given case. On the other hand, Ontario has opted for far more detailed initial reports; the Ontario register's reporting form has spaces for the recording of basic information about: the child and his or her family; the injuries sustained; the nature,

date and place of the alleged incident of abuse; the number of children under age 16 in the home when the incident occurred; any previous involvement by a Children's Aid Society with the child and family; action taken on behalf of the child (whether medical or social service); the present whereabouts of the child and alleged abuser; whether court action is pending with respect to the alleged abuse; and the current status of the case. The nation-wide picture with respect to the storage of child abuse-related information is one of enormous variation ranging from jurisdictions where no collection occurs, to ones where a limited amount of information is gathered, to ones where detailed accounts of child abuse cases are recorded.

A fundamental distinction between the information collected by the various registers concerns the stage at which the case is reported to the central file. In some jurisdictions, information is required to be sent to the register only after a report of abuse or neglect has been investigated and verified by a case worker; elsewhere, every report of abuse or neglect must be forwarded to the register (these provinces can be described as having "reporting" registers). Although some jurisdictions have not clearly designated to which category they belong, the provinces whose registers record only verified cases appear to include Newfoundland, Nova Scotia, Ontario and Saskatchewan, while it appears that every received report is recorded in the registers of Quebec, Manitoba, Alberta and British Columbia.

While there is variation from province to province, the range of functions which child abuse registers were intended to fulfill includes the following purposes.

- Providing information for research in order to develop a clearer understanding of the nature and extent of child abuse;
- Monitoring the management of cases;
- Assessing the potential risk of child abuse. Knowledge of prior incidents of abuse, either within the same or a different province, may influence workers' decisions as to how best to help both the child and family; and
- Checking that new cases have no outstanding court orders against them (such as the child being under a supervision order awarded to another agency).

Follow-up reports, submitted periodically and at every critical juncture in the management of a case (e.g., transfer to another agency or closure) can extend the length of time over which these functions can be exercised. (Form 7 used by the Ontario Ministry of Community and Social Services is an example of this type of follow-up report).

In light of the functions which registers were intended to fulfill, their effective operation is contingent upon the extent to which these purposes are realized with respect to: the complete reporting of cases of child abuse to the registers; the regular consultation of the registers by child protection workers in relation to children being served; the standardized transfer of information from the registers between jurisdictions in instances where abused children and their

families have moved; and the updating and expungement of cases from the registers. The findings of the National Child Protection Survey are drawn upon as the basis of reviewing how these functions were being met in relation to the management of sexually abused children and youths.

Reporting of Cases

If the purposes for which registers were established are to be effectively realized, then it is essential that the register of each province should include a reasonably complete listing of all verified cases of child abuse occurring in that province which are known to child protection workers. The value of the register for assessment of cases is severely vitiated if its records are incomplete. For example, if an abusing parent has been involved with child protection services on previous occasions, and none of these contacts has been reported to the register, the child protection worker who now suspects that the parent is mistreating children again will receive no assistance from the registry in attempting to confirm these suspicions.

If the register is to be used as a source of information for basic research, or for resource allocation and program planning, then the files must contain a comprehensive record of the caseload being handled by child protection workers. The sizeable non-reporting of cases to the registry would render invalid statistical research derived from these files. Non-reporting could also result in an official under-estimation of the extent of the child abuse problem.

In considering the question of the completeness of the information in registers in relation to the occurrence of child sexual abuse, the Committee drew upon findings concerning: the national surveys with respect to the number of cases known in comparison to the numbers listed in registers; the professional interpretation of reporting cases to registers; and the reporting of cases by child protection workers documented in the National Child Protection Survey.

Province	Number of Cases Reported in National Surveys	Number of Cases Listed in Register, 1982
Newfoundland	101	22
Nova Scotia	123	15
Quebec	525	721
Ontario	1,763	330
Manitoba	231	117
Saskatchewan	196	76
Alberta	146	340
British Columbia	215	679

In its national surveys, the Committee obtained information from police forces and hospitals across Canada, but in no instance was this information complete in relation to documenting all cases of child sexual abuse known to these services in a particular province. On the basis of the information provided, it was feasible to document separately the proportion of sexual assaults known to the police and hospitals participating in these surveys in which no contacts had been made with child protection services and to add these totals to the number of cases of child sexual abuse found for that province in the National Child Protection Survey.

In interpreting these findings, the point is reiterated that the cases of sexual assaults against children under age 16 identified by the Committee were based on fragmentary sources in each province (i.e., typically one or more police forces, a hospital and child protection services). It is evident that although the coverage obtained by the Committee was limited, the number of cases identified in several provinces either sharply exceeded the number of cases of child sexual abuse listed in the provincial registers for 1982 or constituted a substantial proportion of the cases that had been reported to the registers. All cases in the police and hospital surveys where contacts had been made with child protection services were deleted to preclude a potential "double-counting" of results.

What is meant by the "reporting" of a suspected or verified case of child sexual abuse to a register may be a matter that is subject to different interpretations by child protection workers. In the National Child Protection Survey, it was found that workers indicated that reports had been made to provincial registers (where these had been established) for about three in four (72.0 per cent) of all children being served. In a special analysis, it was found that there was a small, but statistically significant relationship between the rate of reporting cases to provinces having "reporting" rather than verified "abuse" types of registers.[3] These findings indicate that child protection workers were more likely to report cases where this was either done automatically with cases being opened or where sexual abuse was suspected than to registers having the requirement that cases be verified prior to their being reported.

There was no difference by the age of victims in relation to the reporting or non-reporting of cases to registers. **There were striking differences, however, with respect to cases which were reported or not reported to registers by: the sex of the children; and the types of sexual acts committed.** With one exception, there was a tendency for more sexual acts against girls to be reported than those against boys. However, most of the children served by child protection workers were girls, and when their experience is considered, it is evident that, in general, a higher proportion of sexual acts involving anal contacts and the sexual fondling or touching of the child was reported than the proportion of acts involving attempted vaginal penetration and vaginal penetration with a penis. In the latter category, of 134 cases in which vaginal penetration with a penis were noted in case records by workers to have occurred, a third (32.8 per cent) of these incidents were not reported to registers. Of the 43 instances of attempted rape or vaginal penetration with an object or a finger, over a third (37.2 per cent) were unreported to registers.

Table 27.1

Types of Sexual Acts Committed Against Children Reported to Provincial Child Abuse Registers

Type of Sexual Act Committed Against the Child	Cases Reported to Registers			
	Males		Females	
	Reported	Not Reported	Reported	Not Reported
	Per Cent	Per Cent	Per Cent	Per Cent
Fondling/touching breasts, buttocks, genital area	76.5	23.5	76.8	23.2
Oral-genital/anal	66.7	33.3	85.7	14.3
Attempted vaginal penetration with penis, object, finger	—	—	62.8	37.2
Vaginal penetration with penis	—	—	67.2	32.8
Attempted anal penetration with penis, object, finger	50.0	50.0	80.5	19.5
Anal penetration with penis	73.7	26.3	91.7	8.3

National Child Protection Survey. Types of sexual contact grouped on basis of more specific listing of acts; findings given for six provinces having registers, n=539.

The findings indicate an inversion in the reporting of sexual abuse to registers with notification being made more often for less serious than for more serious sexual acts. In this regard, some child protection workers may be reluctant to report cases when they believe that notification might result in a police investigation or some other form of intervention which does not accord with the agency's treatment plans for a child. The evidence, however, indicates that a number of suspected serious sexual offences against children known to child protection workers were not reported to registers.

The three in four ratio (72.0 per cent) of reporting cases of suspected or verified cases of child sexual abuse to registers must be interpreted cautiously on several grounds. First, as noted, in some provinces the registration of a case is synonymous with its being opened by an agency, and thus, all cases are reported. For this reason, the seven in 10 ratio may be inflated for "abuse" registers as contrasted to those operating on a basis of "reporting" cases.

The second reason for caution in interpreting this reporting ratio hinges upon the process involved between whether a worker makes such a report and whether that report appears in the listing maintained by a provincial register. Allowing for the fact that two provinces did not have central registers and that

the Committee did not obtain information on all cases known to child protection workers in most provinces, it was found in three provinces that the number of cases which child protection workers said they had reported to registers sharply exceeded the total number of cases of child sexual abuse listed in 1982 in the respective provincial registers. These discrepancies ranged between 28.9 per cent and 40.0 per cent. The reasons why these discrepancies occurred may be due to the belief by workers that reports made to a child protection agency have been forwarded to a register when in fact the agency in question did not send the reports to the register.

These findings about the three in four cases of child sexual abuse having been reported to registers contrast sharply with the finding that only one in five (19.7 per cent) child protection workers consulted the registers in relation to the cases upon which information was obtained in the National Child Protection Survey. This anomaly may be partially explained by the fact that in the survey, a number of child protection workers stated what they believed should have been reported rather than what had in fact happened.

A different gauge of the extent to which provincial child abuse registers contain complete information about cases of child sexual abuse was obtained by a question in the National Child Protection Survey which dealt with sexual abuse known to have been committed prior to the case reported to the agency. The question asked whether the child protection worker knew if sexual abuse had previously been committed and who were the suspected offenders and victims.

Reporting of Previous Sexual Offenders to Provincial Register	Number	Percentage
Not reported	84	57.5
Reported for other abuse or neglect	39	26.7
Reported for sexual abuse	12	8.2
Unknown	11	7.5
TOTAL	146	99.9*

* Rounding error

Workers stated that prior sexual offences were known to have been previously committed in about one in three (31.5 per cent) families of children whose cases were being investigated. Four in five (80.2 per cent) of these offences were against a child or children. Of the 146 suspected offenders, reports had been submitted to a provincial register for abuse and neglect in one in three instances (34.9 per cent). Less than one in 12 (8.2 per cent) of these suspected offenders had been reported for sexual abuse to a register.

When child protection workers were asked in the National Child Protection Survey why cases of suspected child sexual abuse had not been reported to a register, the most commonly cited reasons were:

- Insufficient evidence 31.4%
- Uncertainty about reporting procedures 23.1%
- The belief that no register existed in the province 24.4%
- The victim was unwilling to give evidence 6.4%
- The assault was believed to have been an isolated incident 4.5%
- Other 10.2%

Factors which foster incompleteness in the reporting of cases of child sexual abuse to registers may stem in part from the definition of "child abuse" adopted for the purposes of determining which cases are or are not to be reported. Reflecting the definitions set out in provincial child welfare statutes which apply solely to parents or caretakers, other types of abuse involving other relatives, friends or strangers may be excluded from the registers. Cases involving offences prohibited under the *Criminal Code* — such as sexual intercourse with a stranger — need not be reported to a register (although in practice some are). Further, in at least one province, the definition of sexual abuse is limited to children 13 years and younger, thus denying protection to victims over 13, but under the age of majority.

Additional factors which may account for the incompleteness in reporting cases of child sexual abuse include missing referrals, discretionary reporting by workers, lack of sufficient co-operation with other organizations, bureaucratic stress and age restrictions.[4] First, many abuses committed by non-family members are never reported to child protection agencies. Second, child protection workers use their professional judgment as to whether to report an incident of abuse to the register; if the abuse was an isolated incident, occurred long ago, or if it is felt that the family should be spared the stigma of being listed, a report will not be made. Third, in provinces where suspected abusers are notified of their inclusion on a register, the process of reporting may be delayed due to an ongoing police investigation. Fourth, child protection workers carry substantial caseloads, with clients who often go from crisis to crisis in which the physical and the emotional well-being of children are endangered; this situation may leave workers — who, for the most part, maintain an ethic that values work with persons over paperwork — with limited time and little inclination to fill out forms. Finally, the abusive incident may not be recorded if the abuser was a child himself or if, at the time of disclosure, the victim was over the age of majority.

The forms on which initial reports are made may affect the extent to which child protection workers submit information to registers. This conclusion is based on the experience of British Columbia, where the formats of the complaint and follow-up forms were simplified at the beginning of 1978. The modification of these forms "caused a tremendous increase in the forwarding of information to the Registry."[5] The number of verified cases submitted in 1977 (before the changeover) was 653; in 1978, the number of verified cases was 1,061, an increase of 62.5 per cent in a single year.

Consultation of Registers

Provincial registers can only serve as an effective aid in the assessment and provision of assistance to sexually abused children to the extent that child protection workers themselves routinely refer to them upon opening cases. Information from a 1978 study of Ontario's 50 Children's Aid Societies found that 12 stated that their workers "always" or "usually" consulted the Ontario Register and 24 "seldom" or "never" consulted it.[6]

In the National Child Protection Survey, it was found that in provinces where registers had been established, only one in five (21.2 per cent) child protection workers said that they had consulted registers in relation to cases involving child sexual abuse.

Proportion of Cases in Which the Register was Consulted	Number	Percentage
Consulted	114	21.2
Not consulted	379	70.3
Not reported	46	8.5
TOTAL	539	100.0

On the basis of the findings of the two studies, **it is difficult to make a strong case for the utility of provincial child abuse registers as these are presently operated and as they are used by workers in relation to sexually abused children. It is evident that most of the workers whom it might be expected would routinely use this resource in fact do not use it. In the absence of registers being regularly consulted in relation to the child sexual abuse, the major purpose for which they were established is vitiated.**

Transfer of Information between Jurisdictions

The information contained in a provincial child abuse register is restricted to cases occurring within that province; the mobility of victims and their families, however, is not similarly restricted. In its meetings with experienced police officers, physicians and child protection workers across Canada, the Committee learned of numerous instances where victims had been moved from jurisdiction to jurisdiction, as their parents sought to escape social service or police intervention and the opprobrium attendant upon the community's discovery of their abusive behaviour. In situations where the previous incidents of abuse occurred in another jurisdiction or region, and the case was handled by a different agency or a different office of the same agency, then the agency now seeking to provide appropriate services is likely to learn nothing of the victim's history from its own files. Only consultation of the central registers will supply information that will strengthen suspicions that abuse is re-occurring within a

family, that will reveal that court intervention was necessary in the past or that will list the various treatments tried.

The utility of consistent consultation is also affected by the speed with which information may be culled from a register and transmitted to workers in the field. If the information is transferred physically (e.g., by mail or courier), it may not arrive in time to help a child protection worker who is faced with critical decisions, particularly if the worker's office is situated in an outlying location. This dilemma could be resolved by having the information in central registers placed on computers, with all agencies having computer terminals to provide rapid links with the central information bases.

There are two methods by which the sharing of information could be facilitated between provinces. First, whenever a child protection agency learns that a family in which abuse has occurred has moved to another province, that agency could arrange to have the family's registry file (or a copy of it) sent to the other province's register. Second, when an agency makes contact with an abusing family, and learns that the family formerly resided in another province, the agency could contact the register of the other province.

Both methods of interprovincial communication are subject to difficulties. At least one agency must know the prior or subsequent location of the family before information can be sought or sent. Families which move from one province to another without contacting child protection services may break the interprovincial chain of information. Families which refuse, as is their right, to inform an agency of where they previously resided may accomplish the same feat.

The effective operation of either method would require that all provinces having registers to adopt certain uniform procedures. If it is decided to have the files of registers transferred from one province to the next, then the registers must have authorization to release copies of the files at the request of child protection services, and to accept files sent from other jurisdictions. If registers are to provide information from their records to workers from other provinces, they must also have the necessary authorization and procedures for so doing.

Only in Nova Scotia and Ontario does a formal commitment appear to have been made to facilitate a free flow of information between jurisdictions. The situation in other provinces is less clear; and exact mechanisms for transmission remain obscure. It is evident that if the interests of sexually abused children are to be effectively served and protected, then the operation of the various provincial registers must function in an orderly, clearly defined way that fosters an unrestricted exchange of relevant information between the child protection services of each province, including those not currently having registers. **At present, the policies of the various provinces concerning inter-jurisdictional information sharing are inconsistent and lack formal structure.**

Expungement Procedures

For a number of provincial child abuse registers, the practice of registering every report has the advantage of not forcing child protection workers to judge whether or not a certain degree of inappropriate child-rearing conduct actually constitutes abuse, and is registerable. Against this advantage, however, is the likelihood that these all-inclusive registers will receive and file not only valid reports, but also false reports, including some made maliciously or without reasonable grounds.

A number of mechanisms are available to counteract the potential unfairness of registers that collect unconfirmed child abuse reports. There is the option of requiring workers to submit follow-up reports to the register within a specified period of time after an alleged abuse case comes to the attention of a child protection service. Such reports would state whether or not the original suspicions of abuse had been verified. However, there is an argument to be made that even a follow-up statement exonerating a reported abuser is insufficient to correct the injustice done to that person. The only adequate remedy for persons improperly registered is the expungement of their names from the register. Establishing procedures by which persons may have their names removed from the register would serve as a salutary safeguard to ensure that even individuals who are "confirmed" as abusers are not deprived of the right to challenge being thus classified.

The possibility of expungement is of no value, though, if persons registered as alleged or confirmed abusers are not notified of their registration. It may well be that registering a person as a child abuser without so informing him or her, constitutes a violation of his or her civil rights (particularly under the new *Charter of Rights and Freedoms*). There can be no doubt that it is an ethically questionable practice to enter an individual's name in a register of persons who engage in conduct of which society strongly disapproves, without letting him or her know that he or she has been so labelled. This practice effectively denies the person any avenue of appeal. When the Committee undertook its review, there were three jurisdictions where persons received no notification of their names having been placed on the register. These jurisdictions were: Newfoundland, Manitoba and Saskatchewan. In Manitoba, all reports were recorded in the register, and not simply those which had been verified. This means that the name of a person who has never committed any form of abuse may be registered without that person ever knowing of it. In Alberta, there appears to be no formal (i.e., written) notification of the person having been registered, but it is the practice to inform the person of his or her registration during the investigation of the report. No information was received concerning the practice in Quebec with regard to notification of registered persons. In Nova Scotia, Ontario and British Columbia, official notification procedures have been adopted.

As far as the actual availability of expungement procedures is concerned, no method exists in the following provinces by which a person whose name has been entered on the register can apply to have it removed: Newfoundland, Quebec, Manitoba, Saskatchewan and Alberta. Official expungement procedures

have been established in Nova Scotia, Ontario and British Columbia. In Nova Scotia, these procedures are part of a package of safeguards authorized under s. 14 of the *Children's Services Act*, S.N.S. 1976, c. 8. Section 14 provides as follows:

1. Proven cases of abuse shall be removed from the Register after ten years from the date the case was last reported to the Register.
2. Cases of alleged abuse shall not be registered when the agency has been unable to substantiate the allegation and it is the mutual opinion of the Administrator, and the agency which investigated the allegation, that abuse did not occur, and is unlikely to occur.
3. Cases of alleged abuse which may have been registered shall be removed from the Register where a Family Court dismissed an action under s. 49 of the Act [i.e., an application to have a child declared to be in need of protection.]
4. When a case is not removed from the Register, the party wishing the case removed may place the matter before a judge of the Family Court for review.
5. A judge conducting a review pursuant to subsection (4) may order that the case be removed from the Register, or subject to subsection (1) remain on the Register.

Ontario's expungement procedures are set out as follows in the *Guidelines for Reporting to the Register — Child Abuse*:[7]

A name recorded in the Register will be retained for a minimum period of 25 years, unless the Director has ordered the name expunged. Names recorded on the former Registry will be expunged if there has been no access to them for 16 years following the year of registration.

Any person who receives notification that he is identifiable from the Registry or Register may inspect the information and request a Director of Child Welfare to expunge his name altogether or to otherwise amend the identifying information.

This includes persons named on the Registry or Register as allegedly permitting abuse, and children named as abused children where the alleged abuser is not known. In the latter case, the parents or guardians of the child may inspect the Registry or Register and request removal or amending of the information.

The Director will not expunge a name from the Registry or Register unless he has reasonable grounds to believe that the information is in error or should not be in the Registry or Register.

Normally, a name will be expunged when a Children's Aid Society advises that after further investigation they believe the case is not one of reportable abuse.

Expunction Hearing

Where the Director receives a request to expunge a registered person's name or to otherwise amend the Registry or Register, the Director or his delegate

> shall hold a hearing pursuant to *The Statutory Powers Procedure Act*, 1971 before *refusing* the request.
>
> . . . .Long before the case is heard, the verification process will have been completed, and any serious doubts or questions concerning registration will have been examined by the Society and the Ministry.

Any party to an expungement hearing may appeal the decision before the Divisional Court of the Supreme Court of Ontario.

Careful consideration has been given in Nova Scotia and Ontario, and in the review procedures instituted in 1982 in British Columbia, to the potential for procedural injustice inherent in any child abuse registry, and accordingly, measures have been adopted to assure that this potential is not realized. In this respect, these provinces might well be looked to as models by the other provinces, in some of which the establishment of a central register has been accomplished with a disregard for the possibility of civil rights' violations.

The question of expungement leads to a consideration of the related issue of whether there should be established a set period of time after which the names of abusers would automatically be struck from the register, provided that they had not committed further acts of abuse within that period. As has emerged already, this approach has been adopted in Nova Scotia and Quebec, with Ontario going the opposite route and setting a minimum period of 25 years for names to be left on the current register. Nova Scotia has limited the lifespan of entries to 10 years from the date that the given case was reported last, while Quebec has provided for expungement when the child in question reaches age 21.

This practice of automatic deletion may be useful for a number of reasons. First, it tends to keep the registers from becoming cluttered with old cases and maintains them in an up-to-date condition. Second, the practice may be seen as a humane one designed to prevent non-repeating abusers from having their names permanently blackened. On the other hand, the elimination of old records may make the register useless for research purposes — particularly when the research is designed to evaluate differences between the nature and incidence of abuse in the present and in the past. Automatic expungement also prevents workers from tracing past offences beyond a certain period, of persons whom they suspect to be currently abusing children. (For example, the National Child Protection Survey found 2.1 per cent of the offenders were grandfathers). If provincial registers are retained, then a balance must be struck between the rights of offenders not to remain indefinitely on a list whose members are stigmatized by society and the rights of children to be protected by as extensive documentation as possible.

Summary

On the basis of its research findings concerning the use of child abuse registers, the Committee found that:

1. A sizeable proportion of cases of child sexual abuse known to the police, physicians and child protection workers was not reported to child abuse registers;

2. Reports to registers had only been made in one in three cases of previous instances of child sexual abuse of cases currently open;

3. Proportionately more minor than serious sexual offences were reported;

4. Child protection workers had consulted registers in relation to only one in five cases which were open;

5. Procedures relating to the exchange of information between provinces are inconsistent and lack formal structure; and

6. Several provinces having registers have no formal procedures with respect to the periodic review and expungement of cases listed in the files of registers.

In the Committee's view, provincial child abuse registers are clearly not being used to the extent or in the manner they had been intended to by legislators. The utility of their functions appear also to be severely limited as case catalogues, research aids or assessment tools.

The use of the registers is characterized by a selective reporting of cases, an infrequent consultation by workers and an absence of effective means of exchanging information between provinces. This system cannot be construed as one that is particularly helpful in affording protection to sexually abused children. In the Committee's judgment, the alternatives are clear: either the registers must become effective means of identifying child sexual abuse or they must be scrapped in favour of more effective procedures to provide protection for these children. The current operation of the registers is both inefficient and ineffective and does little to assist and protect most children who are sexually abused. Most of the workers do not routinely consult this resource, only a fraction of cases which occur is reported, and review and expungement procedures in use in some provinces require clear specification.

In its general review of public services mandated to assist and protect sexually abused children, the Committee found that the main information reporting system used by each service was seriously flawed in relation to its accuracy of classification of sexual offences against children. This conclusion is documented elsewhere in the Report in relation to police and crime statistics, the medical classification of diagnoses and the identification of convicted child sexual offenders. In relation to these broader trends, the findings concerning the accuracy of the information reported to provincial child abuse registers and their comparatively infrequent use by child protection workers are not unexpected.

The needs of sexually abused children and youths are complex. These children require expert assistance provided by several helping professions. In the Committee's judgment, in most instances, the welfare and protection of the child is too crucial a concern to be attended by a single profession — whether this be by the police, physicians or child protection workers. What is required in this regard is the effective co-ordination of expert assessment and care provided by several professions channelled through as few workers as possible in directly serving the needs of these children.

Elsewhere in the Report, the Committee recommends, in relation to the provision of care for and the protection of sexually assaulted children, that it be a statutory requirement for each case in which child sexual abuse is suspected or confirmed for the services of the police, physicians and child protection workers to be co-ordinated in the assessment of a child's needs, the provision of care and their follow-up.

As a by-product of this mandatory interprofessional co-operation, the Committee believes that a more accurate assessment of a child's situation and needs will be realized, that victims themselves will be better served and protected and that more complete information will be obtained by participating services about the identification and the extent of occurrence of child sexual abuse.

What is required is a central source of pooled information for each province rather than the existing inefficient and inaccurate classificaton systems now in use which serve little useful purpose as means to protect sexually abused children. To the extent that existing systems of classification used by the police, physicians and child protection workers remain unaltered, they will continue to exist by virtue of entrenched custom, professional indifference or for the symbolic purposes of appearing to serve sexually abused victims, but in fact not doing so for most children and youths against whom sexual offences are committed.

References

Chapter 27: Duty to Report

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Chapter 28

Provision of Child Protection Services

Child protection services are established by provincial child welfare legislation as the official agencies to receive reports of and to provide assessment, care and protection for neglected and abused children. In relation to its mandate, the Committee was instructed to consider services rendered on behalf of sexually abused children and how they could be afforded better protection. It was in this regard that, with the co-operation of child protection services in all provinces and the Yukon, the Committee undertook its national survey which documented the experience of young sexually abused victims cared for by these workers.

The development and design of the National Child Protection Survey are given in Chapter 26, *The Child in need of Protection*. The national survey included three components, each of which obtained common basic information, but varied in relation to other items. The three sub-studies were:

1. *National Child Protection Survey* This survey included: Newfoundland, Prince Edward Island, New Brunswick, Nova Scotia, Manitoba, Saskatchewan, Alberta, British Columbia and the Yukon. The full research protocol was used to obtain findings in these jurisdictions for 578 sexually abused children. In four provinces (Newfoundland, Prince Edward Island, Nova Scotia and Saskatchewan), all cases reported to agencies were documented.

2. *Quebec Child Protection Survey* Le Comité de la protection de la jeunesse undertook a survey of services in all regions of Quebec, totalling 403 cases. Approximately half of the items used in the National Child Protection Survey were also incorporated in the Quebec survey.

3. *Ontario Child Abuse Registry* The Ontario Ministry of Community and Social Services provided access to the files of the Child Abuse Registry. All cases (457) reported to the Registry between January, 1981 and July, 1982 were documented.

In order to draw upon as complete information as possible, different combinations of sources relating to the experience of 1438 sexually abused children were used in relation to particular issues. These were coded, respectively:

- Per cent A — National Child Protection Survey, Quebec and Ontario, n=1438

- Per cent B — National Child Protection Survey and Quebec, n=981
- Per cent C — National Child Protection Survey and Ontario, n=1035
- Where the reference is to the National Child Protection Survey, only this source is used, n=578

In Chapter 7, *Dimensions of Sexual Assault*, a description is given of some of the characteristics of victims served by child protection services and the nature of the assaults which they experienced. In this chapter, additional findings are given which describe the children and families served by child protection agencies. *These findings indicate that, in general, the sexually abused victims served by these workers represented a special segment of the Canadian people, a fact which needs to be borne in mind when the findings are being considered.*

Because a number of special words or phrases are used in the child welfare field, a brief glossary is provided of some of the terms used in this chapter.

Glossary of Words and Terms in Child Welfare Field

Agency. Commonly used by child protection workers to refer to the officially designated provincial service or children's aid society responsible for providing services to abused children.

Assessment. The initial phase of case management which comprises a complete collection of information on the child, his or her present state, living conditions, past and present development, and similar information on significant adults and other siblings in the child's life. The primary purpose of the assessment is to develop an appropriate scheme of intervention to meet the child's needs.

Child Protection Worker. An employee of an agency who is usually, but not in all instances, a social worker.

Client. Refers to the person or family served by an agency.

Counselling. Encompasses services provided by workers, including the mutual exchange of information structured in order to facilitate change in the client's circumstances or situation.

Intervention. The procedures used by child protection workers which are intended to produce change in the circumstances of clients. May be used interchangeably with 'treatment'.

Mother/Father-figure. Refers to persons filling parental roles for children, including natural parents, adoptive, step, foster, common-law and parent's friend relationships.

Open Case. Refers to a client currently being served by an agency.

Psychosocial. Used by social workers to refer to the interplay of psychological and social forces impinging upon clients which may affect their ability to function effectively.

Reconstituted Family. A family in which an original parent is absent by death, divorce or separation and is replaced by one or more new members.

Characteristics of Children and Families

Well over eight in 10 children served by the agencies were girls, and when the group of children aged 16 and 17 is included (a reflection of the age limits established by some provinces), then about a third (30.7 per cent A) of the 1438 boys and girls were older teenagers. Two conclusions may be drawn from these findings. Either the effects of the abuse were so detrimental that intervention in these children's lives was necessary years after the event, or these children had been abused more than once or continuously over a period of years. The latter supposition is more strongly supported by the survey's findings. Almost one-sixth of the victims (17.8 per cent) were reported as having been abused prior to the offences which the agencies were treating when the survey was undertaken. Similarly, almost eight in 10 current cases (78.6 per cent) involved abuse that had continued for some years.

On the whole, the children who were victims of sexual abuse presented themselves as average and not severely dysfunctional persons. When asked if the child was currently attending school, the findings of the National Child Protection Survey indicate that in three in four cases (76.1 per cent), the child was attending. In almost three-quarters of the cases (73.2 per cent), the child's intelligence was assessed by the case-worker as being at an average or above average level.

In terms of their family circumstances, a sizeable proportion of the sexually abused children served by child protection workers came from reconstituted families, a high proportion of their 'father-figures' was unemployed, half of the families were on the caseloads of agencies prior to the incidents being reported and one in five had previously been removed by agencies from his or her home. In eight in 10 cases (81.5 per cent C) in all provinces (except Quebec), the child's natural mother was the 'mother-figure' in the home when the offence had occurred. However, it was only half as likely that the natural father was the 'father-figure' (45.2 per cent C). Adoptive or stepfathers (17.5 per cent C) or male common-law partners (13.8 per cent C) filled the paternal role in three in 10 cases. These findings tend to confirm the widely held belief in the child welfare field that reconstituted families served by workers are likely to experience types of problems which are less commonly present in families of partners having first-time marriages or relationships.

A third of the children's mothers (31.3 per cent) were employed and about half of the 'father-figures' (52.7 per cent) had regular jobs. Two in five (42.7 per cent) mothers of sexually abused children received some form of government financial assistance, and of these, three in four (76.8 per cent) were on municipal or provincial welfare. A third of the 'father-figures' (35.5 per cent) were recipients of municipal or provincial welfare.

Half of the families (51.6 per cent C) were on the caseloads of agencies prior to the opening of child sexual abuse cases. As noted in Chapter 7, this experience sharply distinguishes the children served by child protection workers

from those who had contacted the police and hospitals, a high proportion of whom had come to police or hospital attention directly or through professional referrals. This finding underscores a well recognized aspect of the work of child protection services, namely, that they tend to serve families having deeply rooted clusters of problems. The findings are congruent with the results of the 1979-81 review of the locations where victims and offenders lived in Metropolitan Toronto (see Chapter 7). Both sources of information suggest that family composition and neighbourhood of residence may be factors affecting the risk of being sexually abused for some young victims.

In one in five cases (20.1 per cent B) in the National Child Protection and Quebec Surveys, the sexually abused child had been removed by agencies at least once before from his or her home. In two in five families (39.1 per cent), workers had known or suspected that at least one member had previously been sexually abused; in about a half of the cases (47.4 per cent), a family member had been physically abused in the past; and in eight in 10 cases of child sexual abuse (78.6 per cent), the abuse had occurred over an extended period of time.

When these findings are considered together — half of the families being already on agency caseloads, one in five children having previously been removed, the knowledge of previous physical abuse occurring in half of the families, and four in five victims having been abused over a period of time — it is evident that the child protection workers had had numerous previous contacts with many victims and their families. On the basis of their reports, they had recognized that there were severe difficulties in many of these homes. The findings indicate the need for a more careful and thorough assessment of the early signs of risk and danger in relation to child sexual abuse; in this respect, the assessment skills of child protection workers need to be strengthened and/or complemented by those of other workers.

In the review of cases of child sexual abuse referred to provincial registers, it was found that proportionately more minor and fewer serious sexual acts committed against children had been reported. As noted in the next section of this chapter, in two in three cases (64.6 per cent), the workers had known that these children had been sexually abused before the cases had been formally 'opened'. In these situations, it is evident that insufficient protection had been provided in cases where knowledge of abuse was already available to workers. Where this occurred, child protection workers had acted on their belief in the benefits gained by keeping families together, and, by doing so, they may have left the abused child in a position of risk when intervention might have been initiated sooner.

Initial Assessment

In the national survey, child protection workers were asked for a retrospective assessment of the child's situation before cases were formally opened by agencies. In this regard, it is recalled that many children and their families were already known for other reasons to workers. The workers were asked if

the victimized child had had social, psychological or behavioural difficulties before a report of the incident had been made to the agency. The most frequently indicated *social* problem was parent-child conflict (35.3 per cent). Academic failure (30.1 per cent), disruptive behaviour (22.7 per cent) and truancy (21.3 per cent) were other frequently indicated difficulties.

In three in 10 cases (31.7 per cent), a poor self-image was the most frequently reported *psychological* problem. Other less frequently reported psychological problems were: depression (17.0 per cent); suicidal tendencies (12.8 per cent); health problems (12.1 per cent); and disturbed sleep patterns (11.8 per cent). When child protection workers were asked to indicate the frequency of *behavioural* problems experienced by victims before a report of sexual abuse had been made to an agency, in about one in 10 cases, the workers reported: drug abuse (10.9 per cent), alcohol use (10.4 per cent); or theft (9.9 per cent), as apparent behavioural difficulties. Aggressive behaviour (14.2 per cent) and sexual activity (12.8 per cent) were the more frequently cited behavioural problems.

Since the experience of children who had not been victims of child sexual abuse is unknown in relation to whether they may have had comparable difficulties, no conclusions can be reached about whether the children seen by workers were unusually troubled. The findings show that none was without some form of social, psychological or behavioural problem; some had experienced several problems. Overall, most of the children were not assessed as having had many severe problems before child protection workers had formally intervened in reponse to an incident of suspected sexual abuse.

When cases are opened, children and their families are expected to be assessed in relation both to the nature of their presenting problems and to their potential strengths. Some families have different coping skills with which to face crises and resolve their difficulties. On the basis of the worker's initial assessment, different types of intervention may be undertaken.

In two in three (64.4 per cent B) of 981 cases in the National Child Protection and Quebec Surveys, workers had known before the cases had been opened by agencies that the children had been sexually abused. For less than one in three (31.2 per cent), they had not known about the incidents, or the abuse had not yet occurred.

Child protection workers in the National Child Protection Survey identified sexual abuse as a presenting problem (although not necessarily the major one which caused the case to be opened) in four in five cases (78.8 per cent). Physical abuse (17.4 per cent) and neglect (18.8 per cent) were cited as problems in about one-sixth of the cases.

Among problems not involving sexual abuse, marital difficulties were reported for half (49.7 per cent) of the families. (In Ontario, 'family problems' were detected in 41.8 per cent of the cases). Over four in 10 families (44.9 per cent) were experiencing conflict between parents and children. When the work-

Table 28.1

Assessment of Prior Social, Psychological and Behavioural Difficulties of Sexually Abused Children Identified by Child Protection Workers

Assessment of Difficulties Experienced by Victims	Sex of Sexually Abused Children	
	Male Victims (n=73)	Female Victims (n=505)
	Non-Accum. %	Non-Accum. %
Social Difficulties		
• Truancy	21.9	21.7
• Academic failures	27.4	30.4
• Disruptive behaviour	27.4	21.9
• Inability to form relationships	23.2	16.5
• Difficulty relating to authority	13.7	14.7
• Negative peer group	17.8	14.1
• Parent-child conflict	30.1	36.0
• Running away from home	13.7	19.3
• Other	4.1	1.8
Psychological Difficulties		
• Poor self-image	40.0	32.1
• Suicidal	9.4	13.7
• Health problems	9.4	12.9
• Bedwetting and soiling	15.1	3.8
• Eating difficulties	7.6	4.4
• General mental health problems	15.1	10.1
• Phobias	7.6	8.5
• General depression	17.0	17.6
• Pre-occupation with incident	13.2	6.9
• Disturbed sleep pattern	18.9	11.5
Behavioural Problems		
• Drug use	7.6	11.7
• Alcohol use	—	11.9
• Sexually active	7.6	13.9
• Prostitution	1.9	4.6
• Aggressive/assaultive	24.5	13.7
• Theft	7.6	10.5

National Child Protection Survey (eight provinces and the Yukon, n=578).

ers visited these families, they reported that two in five parents(43.2 per cent) had problems with alcohol or drugs. Roughly the same percentage (39.7 per cent) faced stress due to a lack of housing or money.

In half of the cases (52.5 per cent B), assessments by workers began within the first 48 hours after the cases had been opened. Two-thirds (66.7 per cent B) of the assessments started within the first week. However, one-third (33.3 per cent B) of the sexually abused children waited over a week between the opening of the case and the initial assessment.

Between Interval Referral and Assessment	Male Victims (n=152)	Female Victims (n=829)	Total (n=981)
	Accum. %	Accum. %	Accum. %
Within 24 hours	39.5	48.5	47.2
Within 48 hours	44.7	53.8	52.5
Within one week	59.2	67.9	66.7
Within one month	68.4	76.8	75.6
Over one month	70.4	83.4	83.1

In the Committee's judgment, these delays in providing care are unacceptable. They may be extremely harmful to the child, they extend the period of risk and they run counter to the known policies of child protection services.

An outstanding characteristic of the sexual abuses documented in the National Child Protection Survey is their duration. In over three-quarters of the cases (78.6 per cent), the abuses were not isolated incidents. The period of time involved ranged from less than one month to 13 years. The sexual abuse had gone on for less than six months in only 13.7 per cent of the cases. One in four children (24.0 per cent) had been subjected to abuse for 6-12 months; and one in 10 (10.4 per cent) was abused for 13-24 months. Almost one in four victims (24.2 per cent) had suffered abuse for three years or longer.

Duration of Sexual Abuse	Male Victims (n=73)	Female Victims (n=505)
	Per cent	Per cent
Under 6 months	19.2	12.9
6 – 12 months	16.4	25.2
1 – 2 years	1.3	11.7
3 – 5 years	11.0	16.0
6 or more years	11.0	8.5
Not Reported	41.1	25.7

In the Quebec survey, it was found that about one in eight cases (12.4 per cent) was an isolated incident of sexual abuse. One-ninth (10.7 per cent) of the children were abused for six months or less; 5.0 per cent were abused for 7-11 months. One child in 20 had been victimized for a period between one and two years and, for one in eight (12.7 per cent), the abuse had continued longer than two years.

In making their initial assessments, child protection workers encountered a broad range of attitudes held by victims and their parents. Three in 10 children (31.7 per cent) expressed negative feelings towards offenders. Over one-quarter (27.7 per cent) wanted to leave their homes, while almost another quarter (23.9

per cent) wished to stay. One in four victims (24.7 per cent) wanted his or her family to stay together.

Almost half the offenders (47.4 per cent), most of whom were 'father figures', did not want to leave their homes and one-quarter (26.0 per cent) wished to maintain family unity. Over one-third of the mothers (34.3 per cent) preferred to have the offenders remain and to have their children stay with them (33.4 per cent). One in four mothers (26.8 per cent) rejected the offenders.

When child protection workers open cases involving child sexual abuse, the findings indicate that they were confronted with an array of contrasting attitudes held by victims and family members, and that in this respect, there was no standard pattern of customary attitudes or behaviours. Families served by workers came from a variety of backgrounds, faced different difficulties and reacted differently to incidents of child sexual abuse. **The findings underscore the necessity for child protection workers to be well trained in methods of assessment and intervention, since in relation to the problems encountered, no single set of professional techniques is likely to suffice to serve the diverse needs of sexually abused children.**

Services Provided

The two principal methods used by child protection workers to assist abused children are: direct work with children and their families; and co-ordinating the referrals of clients to other services. Services directly provided to sexually abused children may include: short or long-term counselling with individuals, couples or families; group therapy; crisis intervention; parent education; and provison of transportation or accompanying clients to court or hospital. The second type of service provided may include: consultation with other professionals involved in cases; meetings with foster parents; advocacy for clients; referral of clients to appropriate resources; mediation between clients and organizations; serving as witnesses at court; and professional training and organizational meetings.

Medical Examination

About one in two children (52.6 per cent C) in the National Child Protection and Ontario Surveys had been medically examined, either at the behest of child protection workers or these visits had been sought by the children themselves, or by their parents or guardians.

In the Quebec survey, 107 (26.6 per cent) children had had a medical examination (three in 10 girls, 29.9 per cent; one in eight boys, 12.7 per cent). Of the 285 children in the National Child Protection Survey who had been medically examined, two in five (41.1 per cent) had been seen by family doctors and somewhat fewer by hospital abuse unit members (25.6 per cent) or by emergency room personnel (19.3 per cent). Information for Ontario revealed

Medically Examined	Male Victims		Female Victims		Total	
	No.	%	No.	%	No.	%
Yes	54	42.5	490	54.0	544	52.6
No	63	49.6	347	38.2	410	39.6
Unknown	10	7.9	71	7.8	81	7.8
TOTAL	127	100.0	908	100.0	1035	100.0

that 88.4 per cent of the 457 victims had been examined by doctors, 1.2 per cent by nurses and 5.4 per cent by both a doctor and nurse.

Most of the medical care reported to have been received by sexually abused children had not been initiated by child protection workers. Workers were asked to list which types of services had been contacted and whether these contacts had been made by telephone, involved meetings or had led to a full medical assessment.

Proportion of Victims Having Assessment & Services Provided by Physicians/Hospitals Initiated by Child Protection Workers	Male Victims	Female Victims
	Non-Accum. %	Non-Accum. %
Telephoned	20.5	27.3
Meeting	23.3	30.7
Full joint investigation	21.9	26.9

Of children who had been sexually abused, a medical examination had been initiated for one in four girls (26.9 per cent) and one in five boys (21.9 per cent).

When the types of sexual acts committed against children are considered (see Chapter 7), many of which involved vaginal or anal penetration, it is evident that medical care was not provided for a substantial proportion of these children. In its interviews with workers, the Committee learned that medical examinations had not been sought in these instances because: the assaults had occurred sometime in the past; or it was felt by workers that a medical examination might heighten the trauma already experienced by victims.

In light of its findings on sexually transmitted diseases (see Chapter 33), the Committee considers it essential that all sexually abused children be medically examined where it is suspected that vaginal and/or anal penetration has been attempted or has occurred. However cogent other reasons may appear to be at face value, in the Committee's judgment **the protection of the physical**

well-being of these children must be assured; the presumption that no harm may have been incurred because a sexual act was completed in the past is invalid.

Police Services

On average, three in four (74.7 per cent) sexually abused children served by workers were known to the police. About one in 10 cases had been referred to agencies by the police and between a fifth and a quarter (22.6 per cent) had had contacts with the police which victims, their families or other persons had initiated. About half (46.0 per cent) of the contacts with the police had been made by workers.

Contacts With Police	Male Victims (n=73)	Female Victims (n=505)
	Per Cent	Per Cent
Case referred by police	8.2	9.1
Other contacts with police	12.3	20.8
Agency initiated referral	52.1	45.1
None, unknown	27.4	25.0

In one in six (15.7 per cent) contacts with the police, the initial assessment of the child had been jointly undertaken by workers from both public services.

Following the initial assessment, the nature of the contacts between workers and the police included telephone conversations, meetings and jointly undertaken investigations.

Proportion of Victims Having Assessment & Services Provided by Police & Child Protection Workers	Male Victims	Female Victims
	Non-Accum. %	Non-Accum. %
Telephoned	27.4	26.9
Meeting	30.1	31.1
Full joint investigation	28.8	36.2

In about one in three cases (35.3 per cent), a jointly undertaken assessment by police and child protection workers was made of the child's situation.

Other Services

In addition to medical and police services, the other types of services most frequently turned to were school staff and mental health workers. Crown prosecutors were less frequently consulted and voluntary community associa-

tions such as sexual assault centres were contacted in only a small proportion of cases. Few of the contacts with other services led to a jointly undertaken assessment and investigation.

Other Services Contacted	Type of Consultation (n=578)		
	Telephoned	Meeting	Full Investigation
	Non-Accum. %	Non-Accum. %	Non-Accum. %
Crown prosecutor	9.3	9.5	2.4
School staff	18.2	25.6	7.1
Mental health worker	10.5	13.5	4.3
Voluntary community agency	4.3	3.8	0.5

In relation to the types of public and community services contacted by child protection workers in cases involving child sexual abuse, the findings indicate that an intervention model of interdisciplinary co-operation was evolving, but it is evident that it had not yet become a standard operating practice. In some instances, the use of allied professional services and other community resources was sporadic. These contacts infrequently led to a full assessment initiated and co-ordinated by child protection workers.

Interviews with Victims and Family Members

The results of the National Child Protection and Quebec Surveys indicate that workers interviewed victims (79.0 per cent B) and mothers (78.2 per cent B) in four in five cases. (Reasons for not interviewing victims may include the lack of the child's verbal ability or the child's physical absence). In about half of the cases (45.7 per cent B), non-offending fathers were interviewed — in other words, almost all of this group. The victims' siblings were spoken to in two in five cases (42.3 per cent B). Overall, less than half (48.2 per cent B) of the offenders were interviewed by workers.

Persons Interviewed by Child Protection Workers	Male Victims (n=132)	Female Victims (n=829)
	Per Cent	Per Cent
Child (victims)	73.7	79.9
Mother (–figure)	64.8	78.7
Father (–figure)	41.5	46.3
Siblings	39.5	42.8
Offender	41.5	49.5

The findings indicate an uneven and incomplete assessment of the situations of victims and their families upon which to develop subsequent treatment and intervention plans. In cases reported for nine provinces, interviews had not been held with: one in five victims; one in five mothers; one in two offenders; and three in five of the victims' siblings.

The findings indicate serious deficiencies in the scope and thoroughness of the assessments carried out by child protection workers. It is known, for instance, that children living in the same family other than the victim may also have been sexually abused, as the survey's findings document. In the Committee's judgment, it is unclear how an adequate and effective program of treatment and intervention can be conceived and carried out when a full assessment has not been made involving all concerned members of a family, including siblings either at risk or who may have already been victims.

In the Committee's judgment, these significant findings imply a major deficiency in providing protection for sexually abused children served by child protection workers. For many of these children, there is an insufficient assessment of their situation to serve as the requisite basis upon which to mount an effective program for their immediate and long-term protection.

Psychotherapeutic Services Provided

Child protection workers were asked to specify the types of services which they themselves provided for sexually abused children. In their replies, workers distinguished sharply between counselling and assessment interviewing and the provision of other services. In the National Child Protection Survey, half of the victims (53.5 per cent) and one in five offenders (20.6 per cent) were reported to have received counselling from workers. Fewer than one in four families (22.8 per cent) had been involved in some form of family therapy. The findings from the Ontario Survey were comparable, with fewer than one in four children (22.3 per cent) and one in eight offenders (12.7 per cent) reported as having been counselled by child protection workers.

Specialized services, such as group therapy, marital therapy or play therapy were infrequently utilized. Although a broad range of potential psychotherapeutic services could be provided in relation to the needs of victims and their families, the findings indicate that counselling was the most commonly provided service and that even this means of intervention was not being extensively used.

Child protection workers identified social and environmental problems in four in 10 families being served. As documented in the National Child Protection and Ontario Surveys, one in four families (23.2 per cent C) received some form of financial assistance; one in nine (11.1 per cent C), legal assistance; and one in 14 (6.9 per cent C), medical care.

Table 28.2

Provision of Psychotherapeutic Services to Sexually Abused Children by Child Protection Workers

Type of Service Provided	Recipients of Services		
	Victim (n=578)	Offender (n=578)	Family (n=578)
	Non-Accum. %	Non-Accum. %	Non-Accum. %
Individual counselling	53.5	20.6	28.0
Group therapy	9.2	1.4	2.6
Family therapy	10.9	6.9	22.8
Marital therapy	—	6.2	5.5
Victim/offender counselling	3.5	3.5	—
Psychotherapy	4.2	4.5	1.7
Play/art therapy	4.8	—	0.7
Crisis intervention	11.6	5.5	9.5
Addiction counselling	0.5	5.0	3.6
Child management	—	2.1	9.2
Self-Help	0.4	0.9	2.8
Hot-Line	0.7	0.2	0.7
Psychological testing	18.8	10.0	5.5
Other	4.8	1.2	2.8

National Child Protection Survey (eight provinces and the Yukon).

Number of Workers Providing Services

That the nature and quality of the services rendered by child protection workers are instrumental in providing effective assistance is a principle accepted alike by laymen and professionals. In this regard, it is well recognized

Number of Workers Involved	Male Victims (n=73)	Female Victims (n=505)
	Per Cent	Per Cent
One	31.5	39.8
Two	35.6	29.5
Three	13.7	10.9
Four	5.5	6.3
Five	4.1	3.8
More than Five	0.4	3.8
Unknown	9.2	5.9

that optimal care in child welfare, where feasible, should involve as few professional workers as possible who are working on behalf of clients. In this respect, the findings of the National Child Protection Survey indicate that most, but not all, sexually abused children were well served. About four in 10 victims (38.7 per cent) were served by one child protection worker.

Transfers of cases between intake and long-term service workers occur routinely: 30.2 per cent of the clients were assigned to two workers. Over two-thirds of the victims and their families can be considered not to have been subjected to multiple transfers. Nevertheless, one-quarter of the clients (25.6 per cent) were transferred among three or more workers. The Committee learned that the rates of staff turnover in child protection agencies were high and this fact likely accounted for the frequent transfer of some of the clients.

Removal and Placement of Children

In seeking to assist sexually abused children, child protection workers are caught in the dilemma of judging which of several courses of action may best serve the child's interests and needs and protect his or her well-being. Their legal and social mandate is to protect children from harm — in this instance, sexual abuse. The only certain method to accomplish this duty, namely, to ensure that children are not abused again, is to remove them physically from their homes (where abusers are residents) and break off unsupervised contacts between victims and offenders. The Committee was told by experienced workers of the immense pressure that the community often placed on them to apprehend children. At the same time, child protection workers are aware of the harms incurred by forcing children to leave their homes. The established policy of many agencies is, whenever possible, to keep families together. It is widely believed by child protection workers that children who are taken from their families are likely to view this intervention as a form of punishment, may resent it or feel it is no more than they deserve. It has been suggested in the child welfare literature that the removal of the child may be more harmful than the abuse the child sustained.

In theory, the solution to this dilemma is simple: the abuser should be removed from the home. In practice, factors such as recriminations by the remaining parent, the possible return of the offender, and, above all, the lack of statutory authority under child welfare legislation enabling the expulsion of reluctant abusers from their homes effectively hinder the efforts of child protection agencies in this regard. To attain this end, child protection workers must seek recourse to the criminal justice system.

In the course of its review, the Committee found instances where child protection workers and the police worked effectively together on behalf of sexually abused children. However, close collaboration resulting in jointly undertaken assessments and investigations is still the exception; it is not an established practice. Many child protection workers resent what they perceive to be the brusque intrusion of the police in the sensitive domestic problems of fami-

lies, an intervention which is often seen as being more harmful than beneficial. While these sentiments are more matters of belief than of documented fact, some workers act upon them in reaching decisions concerning the disposition of sexually abused children.

In Chapter 29, *Intervention Strategies*, a review is provided which compares the procedures and outcomes resulting from philosophically different assessment and intervention approaches adopted to assist sexually abused children. In the remainder of this chapter, an overview is given of the actions taken by child protection workers following their assessment of the needs of these children.

Initial Removal of the Child

In the National Child Protection and Ontario Surveys, it was found that during the period immediately following an initial assessment by an agency's staff, about half of the children (47.7 per cent C) were removed and about half (48.0 per cent C) remained at home. In contrast, about one in five (18.6 per cent) victims in Quebec was removed from his or her home. For nine provinces and the Yukon, about two in five children (38.1 per cent C) were placed in an agency's facility and one in 10 (9.7 per cent C) was placed with relatives. The siblings of victims were also removed from home in one in 15 cases (6.5 per cent C).

Initial Placement of Children	Male Victims (n=127)		Female Victims (n=908)		Total (n=1,035)	
	No.	Non-Accum. %	No.	Non-Accum. %	No.	Non-Accum. %
Child at home	67	52.8	430	47.4	497	48.0
Child in care	46	36.2	348	38.3	394	38.1
Child with relatives	5	3.9	95	10.5	100	9.7
Siblings in care	5	3.9	62	6.8	67	6.5
Other	8	6.3	71	7.8	79	7.6

The workers' decisions to remove children from their homes were based on a number of considerations, including: the child's age; the frequency of the abuse; the family environment; other problems experienced by the victims; the distance between the child's residence and the agency's offices (affecting the time taken by workers to contact victims and their families); and other factors. **The findings of the National Child Protection Survey indicate that there was no relationship between the agency's decision to remove or not to remove children and the types of sexual acts committed against them. Children who had been sexually fondled were as likely to have been apprehended as children who had been victims of vaginal or anal intercourse (regression analysis, $r^2=0.0028$). Conversely, children who had been victims of more serious sexual acts were as likely to be left in their homes as to have been removed. This finding indicates that a sizeable proportion of sexually assaulted children is left in a position of unknown risk.**

This finding warrants the immediate and sharp revision of child protection practices in relation to serving these children, and underscores the need for more effective assessments of these types of cases.

Initial Removal of Suspected Offender

In one in four cases (27.8 per cent C) in the National Child Protection and Ontario Surveys, child protection workers were uncertain or did not know what had happened to offenders who lived in the victims' homes. This finding may well be a result of incomplete reporting of information in agency records. In the Committee's view, however, it is an omission of significant information which should be included in all child protection records concerning sexually abused children.

In about one in three cases in nine provinces and the Yukon (36.4 per cent C), the suspected offenders remained at home and for another third (34.9 per cent C), the offenders left home following an agency's initial assessment.

Initial Removal of Offender	Male Victims (n=127)	Female Victims (n=908)	Total (n=1,035)
	Per Cent	Per Cent	Per Cent
Offender at home	24.4	38.1	36.4
Offender left	33.9	36.1	34.9
Other	3.1	1.8	1.9
Unknown	38.6	24.0	26.8
TOTAL	100.0	100.0	100.0

Findings comparable to those obtained for victims were found concerning the types of sexual acts committed and whether offenders stayed at or left their homes (regression analysis, $r^2=0.0027$). There was no significant relationship between the removal of offenders and the types of sexual acts committed.

These important findings concerning the removal and non-removal of victims and offenders in relation to the sexual acts committed raise serious questions about the principles and adequacy of assessment practices of child protection services. They reflect the unsettled state of the field in relation to the different intervention strategies adopted. Many of the intervention strategies adopted are manifestly not based on a judgment concerning the gravity of the sexual assaults committed. Children who had been victims of vaginal or anal intercourse were as likely to be left at home with resident offenders as to have been removed. In its recommendations given elsewhere, the Committee considers the social policy and legal significance of these findings in relation to the need to afford better protection for sexually abused children served by child protection workers.

Living Arrangements For Children Following Assessment

The findings of the National Child Protection Survey indicate that several different types of living arrangements occurred after child protection assessments had been completed. These included: one in five cases (20.2 per cent) in which the non-offending parent and the child continued to live together; one in five cases (20.8 per cent) in which all family members separated; about one in five (18.9 per cent) in which both parents continued to live together without the child; and for about two in five cases, other options were taken.

Living Arrangements After Assessment	Male Victims (n=73)	Female Victims (n=505)	Total (n=(578)
	Per Cent	Per Cent	Per Cent
Family together	13.7	15.1	14.9
Parent and child	23.3	19.8	20.2
Parents together	8.2	20.4	18.9
Offender and child	4.1	1.0	1.4
Family apart	26.0	20.0	20.7
Other*	19.2	18.0	18.2
Unknown	5.5	5.7	5.7
TOTAL	100.0	100.0	100.0

* "Other" includes situations in which the offender was not a family member.

Time in Care

The information concerning the length of time that children removed from their homes spent away from them does not provide an accurate assessment of the usual duration, since a number of the cases documented in the National Child Protection Survey were still open or services were being provided when the information was obtained.

Time in Care	Male Victims (n=73)	Female Victims (n=505)	Total (n=578)
	Accum. %	Accum. %	Accum. %
Not in care	100.0	98.4	99.3*
Less than 1 week	65.8	64.7	64.9
1 – 4 weeks	61.7	61.0	61.1
1 – 3 months	49.3	50.3	50.2
4 – 6 months	39.7	42.8	42.4
7 – 11 months	24.7	29.1	28.5
1 – 2 years	19.2	19.8	19.7
3 years	2.7	4.0	3.8
More than 3 years	2.7	1.8	1.9

* Information missing for 0.7 per cent.

About two in five children (38.9 per cent) were reported to have been in care for less than four weeks. Two in five (42.4 per cent) had been in care for four months or longer.

Present Living Arrangements

Of children removed from their homes when the National Child Protection Survey was undertaken, one in three (30.6 per cent) was in foster care, over two in five (44.5 per cent) were living with their families and about one in four (26.3 per cent) lived with families from which the resident offender had departed. About one in five children (18.2 per cent) lived with families that included offenders.

Present Living Arrangements of Victims	Male Victims (n=73)	Female Victims (n=505)	Total (n=578)
	Accum. %	Accum. %	Accum. %
Foster care	39.7	29.3	30.6
On own	1.4	6.5	5.9
With relatives	2.7	7.3	6.7
With family without offender	28.8	25.9	26.3
With family with offender	20.6	17.8	18.2
Other	2.7	5.3	5.0
Unknown	4.1	7.9	7.3
TOTAL	100.0	100.0	100.0

In Quebec, somewhat different living arrangements were found in the survey conducted by Le Comité de la protection de la jeunesse. One child in 10 (10.7 per cent) was in foster care and one in four (24.8 per cent) had remained with his or her family. Of the latter, virtually all were living with offenders. In relation to the findings of both surveys, it is recalled that since some of the children were still being cared for by agencies, the final place of residence might differ from those reported as the "present place of residence".

Status of Case

Although the benefits of short-term therapy (i.e., three months or less) are gaining recognition in the field of child welfare, child protection workers also are aware that sexual abuse is a deeply rooted problem which may require a considerable amount of casework to undo its effects and to prevent, if possible, reoccurrences. The findings from the National Child Protection and Quebec Surveys illustrate this awareness: over three-quarters of the cases (77.9 per cent B) were open when the Committee obtained its information.

Status of Case	Male Victims (n=152)	Female Victims (n=829)	Total (n=981)
	Accum. %	Accum. %	Accum. %
Open	83.5	76.8	77.9
Closed	15.8	22.3	21.3
Unknown	0.7	0.9	0.8
TOTAL	100.0	100.0	100.0

Although the reporting forms submitted to the Ontario Child Abuse Register specify the "current" status of a case, information was not provided on this point for two in five cases (40.9 per cent). Of the remainder, one in five (21.0 per cent) was closed and about two in five (38.1 per cent) were open.

Information on the reasons for closing cases was sought in the National Child Protection Survey. For the 188 closed cases, the most frequently cited reason was that sufficient counselling had been provided (36.2 per cent). Of this group, the most frequent reason cited was that sufficient counselling had been rendered with the result that the clients no longer needed assistance (36.2 per cent). One in five cases (21.8 per cent) had been closed because the agencies did not receive the clients' co-operation. Less frequently, cases were closed because families had moved away (13.8 per cent) or had been referred to other service organizations (12.8 per cent). The least frequently cited reason was that children had become too old to be provided with child protection services (10.6 per cent).

No Court Involvement

Of the cases of child sexual abuse in which there was no court involvement, the most commonly cited reason, one given for two in three cases (68.2 per cent), was that the agency's plan for the client precluded taking this course of action. In about a third of the cases (33.0 per cent), insufficient evidence was reported as the basis for not seeking a court hearing. Sometimes, more than one justification was listed. Among the less frequently stated reasons were: cases were before criminal courts (16.5 per cent); the victim or a witness refused to testify in court (10.6 per cent); and child protection workers believed that a court appearance would place too much stress on the child (9.4 per cent).

Court Involvement

The results for 1438 cases from all provinces and the Yukon indicate that in one in three cases (34.3 per cent A) charges were laid, in about two in five cases (42.9 per cent A) no charges were laid and this information was unknown by workers for one in five cases (22.8 per cent A).

Criminal Charges Laid	Male Victims		Female Victims		Total	
	No.	%	No.	%	No.	%
Yes	64	31.1	429	34.8	493	34.3
No	82	39.8	535	43.4	617	42.9
Unknown	60	29.1	268	21.8	328	22.8
TOTAL	206	100.0	1,232	100.0	1,438	100.0

Somewhat different findings emerge when the information for Quebec is considered separately and only the experience of the other nine provinces and the Yukon is drawn upon in relation to the proportion of cases in which there was intervention by the courts. In about one in five cases (18.4 per cent C), this information was not reported in the National Child Protection and Ontario Surveys.

Court Involvement	Number	Percentage
No Court Involvement	302	29.2
Child Welfare Court	138	13.3
Criminal Court	253	24.4
Child Welfare and Criminal Courts	152	14.7
Not Reported	190	18.4
TOTAL	1035	100.0

In three in 10 cases (29.2 per cent C), there was no court involvement. Between one in seven and one in eight cases (13.3 per cent C) proceeded solely to child welfare courts and one in four (24.4 per cent C) exclusively involved hearings before criminal courts. In one in seven cases (14.7 per cent C), the cases were brought before both child welfare and criminal courts. In the Quebec Survey, information was not reported concerning court involvement for one in two cases (49.6 per cent). For one in three cases (34.0 per cent), there was no court involvement, one in 10 (10.2 per cent) proceeded to the Youth Court, one in 25 (4.0 per cent) to the Court of Sessions, and 2.2 per cent involved hearings before both types of courts.

Except for Quebec, of cases involving child sexual abuse documented for nine provinces and the Yukon, the criminal justice system was more often resorted to than was the civil justice system (child welfare courts). Of the one in two cases (52.4 per cent C) having court hearings, three in four (74.6 per cent C) proceeded to criminal courts and one in two (53.4 per cent C) to child welfare courts. As noted, a portion of the cases came before both levels of court.

Child Welfare Court

The Committee learned from its meetings with many child protection workers across Canada that most agencies prefer not to seek court intervention in relation to child sexual abuse. As documented in the National Child Protection and Ontario Surveys, this option was, however, followed in about one in two cases (52.4 per cent C). When this course of action is taken by child protection workers, it is because they recognize that a child is in need of certain types of services or of a period of guardianship, means which may not otherwise be realized, but only attained through the auspices of the Court.

It is widely believed in the child welfare field that most cases coming before Child Welfare Courts represent a failure of all parties involved to come to an agreement to co-operate in the child's best interests. In these instances, resorting to the courts may be the only avenue available whereby workers feel they can work effectively with hostile or reluctant families. In this regard, in the National Child Protection Survey, workers reported that one in four suspected offenders (27.0 per cent), one in five mothers (21.8 per cent) and one in six victims (17.1 per cent) were hostile to the initial intervention by workers in their affairs.

Child Present in Court

Although court proceedings may vitally affect their lives, the findings of the National Child Protection Survey found that in about two in three cases (64.5 per cent), these children were reported not to have appeared at any time in court. In about a third of the cases (32.4 per cent), children did appear in court.

Child Present in Child Welfare Court	Male Victims (n=33)	Female Victims (n=229)	Total (n=262)
	Per Cent	Per Cent	Per Cent
Yes	27.8	33.2	32.4
No	72.2	63.3	64.5
Unknown	—	3.5	3.1
TOTAL	100.0	100.0	100.0

Some of the children who did not appear in court may have been either too young or incapacitated physically and mentally to experience the stress of making such an appearance. However, the findings obtained by the Committee in relation to the social, psychological and behavioural difficulties experienced by sexually abused children served by child protection workers indicate that many of these children who were fit to appear were not given the opportunity to do so. The Committee regards this practice as disturbing: it precludes these children from directly giving their accounts to judges, and in turn, prevents judges

from directly forming their own assessments about the emotional and physical state of the child.

The Child Represented in Court

At Child Welfare Court hearings, no information was reported for one in four cases (26.3 per cent) documented in the National Child Protection Survey. One child in eight (12.2 per cent) was represented by no one. About two in five (38.6 per cent) were represented by child protection workers. One in nine children (11.4 per cent) was represented by a lawyer.

Child Represented in Child Welfare Court	Male Victims (n=33)	Female Victims (n=229)	Total (n=262)
	Per Cent	Per Cent	Per Cent
Lawyer	3.0	12.7	11.5
Child protection worker	42.4	38.0	38.6
Other	6.1	12.2	11.4
No representative	21.2	10.9	12.2
Unknown	27.3	26.2	26.3
TOTAL	100.0	100.0	100.0

How these findings are interpreted depends upon the weight assigned to having a professional trained in legal affairs — but not usually child welfare — representing children in court. In framing child welfare statutes, it appears that legislators acted on the assumption that child protection agencies would work towards ensuring the best interests of children, and, therefore, would speak effectively for them in court. Recently, there has been a growing and more widely held belief that children should be able to present their own views, or for them to be represented by attorneys. If the latter philosophy is adopted, the findings presented may be viewed with concern.

Reactions to Court Proceedings

Child protection workers completing the National Child Protection Survey were not aware of their client's reactions to child welfare proceedings in one in four cases (25.6 per cent). The workers listed a number of varied responses for the rest of the children. (Children who did not appear in court are included as the court process affected them as well). Undoubtedly like many persons unexperienced in court procedures, it is not surprising to learn that many of the children exhibited anxious and excited reactions.

Child's Reaction to Child Welfare Court	Male Victims (n=33)	Female Victims (n=229)	Total (n=262)
	Per Cent	Per Cent	Per Cent
Agitated	6.1	15.2	14.1
Anxious	21.2	23.6	23.3
Depressed	18.2	15.3	15.6
Indifferent	12.1	8.3	8.8
Excited	—	2.2	1.9
Other	3.0	11.8	10.7
Unknown	39.4	23.6	25.6
TOTAL	100.0	100.0	100.0

One in four children (23.3 per cent) was ajudged by workers to have been nervous about the court hearing; depression was the next most common response (15.6 per cent); and one in seven (14.1 per cent) was agitated or upset. The workers believed that about one in three children (29.7 per cent) was traumatized by being involved in the proceedings of a child welfare court. The remainder were indifferent (8.8 per cent), excited (1.9 per cent) or evinced a number of other reactions (10.7 per cent).

Proportion of Children Harmed by Child Welfare Court Intervention

In interpreting these findings about the reactions of sexually abused children involved in proceedings before a child welfare court, an important consideration is whether the child protection workers believed that these young victims had been harmed by this intervention. During its review, the Committee learned that it was a widely held belief in the fields of child welfare and family law that the involvement of children in court proceedings is harmful to children. Precedents established elsewhere, such as in Israel where the child is represented by a child advocate in court, were cited as justification for this position. In this regard, the Ministry of Justice of the Government of Israel informed the Committee that no studies have been undertaken for that nation which assess the application of this procedure and its consequences for the children involved.

In order to determine whether children were believed to have been harmed by their involvement in child welfare court proceedings, the Committee asked child protection workers for their judgment on this matter concerning cases they had served which had proceeded to court. The Committee recognizes that this type of information may not accord directly with whether these children had in fact been harmed. The findings, however, were based on the informed judgment of child protection workers who presumably had worked closely with these children and their families, who had been responsible for seeking court

intervention, and who, in many instances, had represented their interests at court hearings. As such, the findings represent the informed judgment of child protection workers, who it could be expected, would be deeply concerned and well appraised of the risks involved for children under their care.

Proportion of Children Harmed by Involvement in Child Welfare Court Proceedings	Male Victims (n=33)	Female Victims (n=229)	Total (n=262)
	Per Cent	Per Cent	Per Cent
Harmed	6.1	5.2	5.3
Not harmed	39.4	48.0	47.0
Unknown	54.5	46.7	47.7
TOTAL	100.0	99.9*	100.0

*Rounding error

In the National Child Protection Survey, child protection workers were asked whether in their judgment the children involved in proceedings of child welfare courts had been harmed. In half of the cases (47.7 per cent), this information was unknown. Considering the crucial significance of this type of information, its lack of documentation represents a serious omission in child protection records. It is recalled that, in assembling information for the National Child Protection Survey, both records of agencies and the experience of workers were drawn upon; the findings did not exclusively derive from the former source.

For about half of the cases (47.0 per cent), it was reported that the children involved in court proceedings had not been harmed. Overall, child protection workers reported that about one in 19 children (5.3 per cent) had been harmed by this form of legal intervention.

When the findings concerning the reported reactions of children and the assessment of harms incurred are considered together, it appears, based on the informed judgment of child protection workers, that while considerably more children were anxious or upset by court proceedings, few were believed to have suffered any lasting harms resulting from this process.

Until more complete and detailed documentation is available, the Committee accepts these findings as constituting the informed opinion of professional workers who were deeply concerned about children's well-being. The findings indicate that for well over nine in 10 children, there was no justification in relation to the potential harms incurred to believe that they were likely to have been seriously harmed by court intervention on their behalf. The findings given subsequently concerning the reactions of children to the proceedings of criminal courts reinforce this conclusion.

Criminal Court

The information about the experience of sexually abused children whose cases were brought to criminal court is limited, since as noted in Chapter 6, *Occurrence of the Problem*, only a small proportion of the persons who were victims of sexual offences as children had contacted or been served by child protection services. Of those who came to the attention of child protection services, many were not involved in court proceedings, and of those who were, cases may have been heard before child welfare courts, criminal courts or both types of courts. As a result of this selective, winnowing process, only a portion of the cases initiated by child protection services came to the attention of the criminal courts.

The information available from child protection workers about the experience of children served by agencies whose cases involved criminal court hearings is further limited by an aspect of child protection practice about which the Committee had been unaware before it undertook its review. The findings indicate that, in a sizeable number of cases involving criminal court hearings, child protection workers were either misinformed, or did not know what had happened to the children in their care or to the suspected offenders who had been charged. It is recalled that the cases known to child protection services having any form of court intervention, three in four had resulted in criminal court hearings. In this regard, the lack of information by child protection workers about what happened to a sizeable proportion of these children constitutes a serious omission in the scope of the services provided for these children and in the follow-up of children in their care.

Reasons For Not Laying Charges

In a total of 480 cases drawn from the National Child Protection and Ontario Surveys, criminal charges were not laid against suspected offenders. Among these cases, the most commonly cited reason why charges were not laid was lack of evidence (72.7 per cent C). In about one in five cases (18.7 per cent C), the offender's willingness to receive treatment was reported as a reason for not laying charges. For one case in six (16.7 per cent C), a person — child, witness or spouse — was unwilling to testify. In about one in eight cases (12.1 per cent C), the credibility of the complainant or witness was questioned, and unlike the confirmation of cases by child protection workers, this occurred in cases involving boys three times more often than those involving girls.

Elsewhere in the Report, the Committee makes recommendations with respect to the admissibility of children's evidence in court hearings. The findings for nine provinces (except Quebec) show that the age of the child was given as the reason for not laying charges in only one in 19 cases (5.6 per cent C) in this survey.

Reasons Charges Not Laid	Male Victims (n=59)	Female Victims (n=421)	Total (n=480)
	Non-Accum. %	Non-Accum. %	Non-Accum. %
Age of child	10.2	5.0	5.6
Offender unknown	5.1	5.2	5.2
Lack of evidence	71.2	72.9	72.7
Credibility questioned	28.8	9.7	12.1
Unwilling to testify	23.7	15.7	16.7
Offender warned	8.5	3.3	4.0
Offender seeking treatment	23.7	18.1	18.8
Other	28.8	39.9	38.5
Unknown	15.3	10.5	11.0

Sexual Acts Committed and Charges Laid

Two types of statistical analysis were undertaken to determine the association between the types of sexual acts committed against children served by child protection services and whether charges were laid against suspected offenders. In both instances, the findings were drawn from the National Child Protection Survey. In the first analysis, a multiple regression correlation, it was found that when all types of sexual acts were considered, there was no statistically significant relationship between these acts and whether criminal charges had been laid against suspected offenders (regression coefficient, $r^2=0.0386$).

In the second statistical analysis, a more detailed review was made involving the more serious acts where vaginal and/or anal penetration by a penis had been committed against children served by child protection workers. Acts of this kind had been committed against 183 children, of whom information about whether charges had been laid was unknown for 14 cases. The findings given here are for 169 children.

Type of Sexual Act Committed against the Child	No Charges Laid		Charges Laid	
	No.	%	No.	%
Male Victims				
Anal penetration with penis	8	47.1	9	52.9
Female Victims				
Anal penetration with penis	2	28.6	5	71.4
Vaginal penetration with penis	60	45.1	73	54.9
Anal and vaginal penetration by penis	2	16.7	10	83.3

The findings serve to extend results of the regression analysis. Although the number of cases is small where both vaginal and anal penetration by a penis had occurred, charges were laid in five in six of these cases (83.3 per cent). The next category where charges were most frequently laid was the anal penetration by a penis of female victims. Slightly over one half (54.9 per cent) of the cases involving vaginal penetration by a penis resulted in charges being laid.

In instances involving anal penetration by a penis, charges were more likely to be laid in incidents in which girls (71.4 per cent) than boys (52.9 per cent) had been victims. When a distinction is made for girls who had been victims of vaginal and anal acts of penetration by a penis (double-counting the few instances where both acts had been committed), then charges were considerably more often laid in instances where anal penetration by a penis (78.9 per cent) had occurred than those where vaginal penetration by a penis (57.2 per cent) had been committed.

These findings parallel those obtained in relation to the types of sexual acts committed against children reported by child protection workers to provincial child abuse registers. **These findings indicate that many serious sexual offences known to child protection workers had not been reported to registers or resulted in charges being laid and, in fact, that there was an inversion from the results which might have been expected in relation to two of the most serious sexual acts — vaginal and anal penetration by a penis. Some of the child protection workers serving these sexually assaulted children, it appears, regarded acts of anal penetration by a penis as a more serious offence than acts of vaginal penetration by a penis. In terms of the potential long-term physical harms to girls of becoming pregnant or contracting physically damaging sexually transmitted diseases, there can can be no doubt that the latter acts constitute a graver danger for children than do the former.**

In the Committee's judgment, the professional grounds upon which decisions of this kind are made, and the decisions themselves, are wholly unacceptable. There can be no doubt that the protection afforded children in these situations must be strengthened.

Guilty Plea

Of the cases in the National Child Protection Survey for which information was available, one in three (33.0 per cent) suspected offenders pleaded guilty, about one in four (23.7 per cent) did not and child protection workers did not know the outcomes of the remainder of the cases appearing in criminal court (43.3 per cent).

Guilty Plea	Male Victims (n=20)	Female Victims (n=174)	Total (n=194)
	Per Cent	Per Cent	Per Cent
Yes	50.0	31.0	33.0
No	20.0	24.1	23.7
Unknown	30.0	44.8	43.3
TOTAL	100.0	99.9*	100.0

*Rounding error

Preliminary Hearing

At the preliminary criminal court hearings of suspected offenders, about one in five (19.1 per cent) was not committed to trial, one in three (32.5 per cent) was, and about one in six (17.5 per cent) was referred for psychiatric and/or psychological assessment. In three in 10 cases (30.9 per cent), workers did not know the trial status of suspected offenders in relation to the children whom they had been serving.

Results of Preliminary Hearing	Male Victims (n=20)	Female Victims (n=174)	Total (n=194)
	Per Cent	Per Cent	Per Cent
Committed to trial	20.0	33.9	32.5
Not committed to trial	20.0	19.0	19.1
Psychiatric assessment	5.0	19.0	17.5
Unknown	55.0	28.1	30.9
TOTAL	100.0	100.0	100.0

Reactions to Criminal Court Proceedings

The information about whether children appeared at preliminary criminal court hearings or trials is incomplete, with this fact not having been documented for two in five cases (41.2 per cent) reported in the National Child Protection Survey. Of the three in five cases where this information was provided, slightly more of the children (32.5 per cent) did not appear at preliminary hearings or trials than those who had done so (26.3 per cent).

Child Present in Criminal Court	Male Victims (n=20)	Female Victims (n=174)	Total (n=194)
	Per Cent	Per Cent	Per Cent
Yes	15.0	27.6	26.3
No	30.0	32.8	32.5
Unknown	55.0	39.6	41.2
TOTAL	100.0	100.0	100.0

In comparison to the experience of children attending child welfare courts, proportionately fewer children appeared in criminal courts. Of the 51 cases in which the victims were present in criminal court, just over half (54.9 per cent) testified. Of the 28 children who testified, one in nine (10.7 per cent) was under age seven. Almost one-third (32.1 per cent) were between seven and 11 years-old. One in four (25.0 per cent) was between 12 and 13 years-old; another quarter (25.0 per cent) were 14 and 15 years-old. Although the number of cases in which children gave testimony in criminal court proceedings is small, it is evident that in a number of instances the testimony of very young children was permitted to be given by the court. Almost three in five (57.1 per cent) of these children gave sworn testimony and about three in 10 (28.6 per cent) gave unsworn testimony. The sole reason cited why four children had not given testimony was that they were incapable of doing so on account of their young age.

Children may become upset or agitated concerning court hearings in which they are not present as well as those in which they actually appear; here, their general reactions are considered in relation to criminal court proceedings whether they were present or not present at preliminary hearings or trials.

Child's Reaction to Criminal Court	Male Victims (n=20)	Female Victims (n=174)	Total (n=194)
	Per Cent	Per Cent	Per Cent
Agitated	20.0	14.9	15.5
Anxious	10.0	11.5	11.3
Depressed	10.0	8.1	8.3
Indifferent	—	4.0	3.6
Excited	—	0.6	0.5
Other	—	6.3	5.7
Unknown	60.0	54.6	55.1
TOTAL	100.0	100.0	100.0

The principal finding obtained in the National Child Protection Survey concerning children's reactions to criminal court proceedings was that child

protection workers gave no information for over one in two cases (55.1 per cent) involved in this process. Of the remainder, the most frequently reported reactions were: agitation (15.5 per cent); anxiety (11.3 per cent); and depression (8.3 per cent).

Proportion of Children Harmed by Criminal Court Intervention

In two in three cases (67.5 per cent) in which sexually abused children had been involved in criminal court proceedings, child protection workers reported no information concerning whether in their judgment these children had been harmed by this legal intervention. About one in 10 children (9.8 per cent), a proportion higher than that reported for cases appearing before child welfare courts, was deemed to have been harmed.

Proportion of Children Harmed by Involvement in Criminal Court Proceedings	Male Victims (n=20)	Female Victims (n=174)	Total (n=194)
	Per Cent	Per Cent	Per Cent
Harmed	20.0	8.6	9.8
Not harmed	10.0	24.1	22.7
Unknown	70.0	67.2	67.5
TOTAL	100.0	99.9*	100.0

* Rounding error

The findings concerning whether children involved in the proceedings of child welfare and criminal courts had been harmed by these interventions is incomplete. For most of the children, child protection workers gave no information concerning this issue. On the basis of the information provided, in each instance, only a small proportion of the children was reported by workers to have been harmed.

Outcome of Trials

Of the 1035 cases of child sexual abuse documented in the National Child Protection and Ontario Surveys, one in six (16.5 per cent C) resulted in offenders being convicted on charges pertaining to sexual abuse. Of the 462 persons charged, 171 were convicted, charges were withdrawn in one in 15 cases (6.5 per cent C) and one in 36 suspected offenders (2.8 per cent C) was acquitted.

Outcome of Trial	Male Victims (n=56)	Female Victims (n=406)	Total (n=462)
	Per Cent	Per Cent	Per Cent
Conviction	35.7	37.2	37.0
Acquittal	1.8	3.0	2.8
Charges withdrawn	1.8	7.1	6.5
Unknown	60.7	52.7	53.7
TOTAL	100.0	100.0	100.0

Of the 171 convicted offenders, slightly over half (53.8 per cent C) received prison sentences, over a third (35.7 per cent C) were put on probation and one in 17 (5.8 per cent C) was given an absolute or conditional discharge.

Sentences	Male Victims (n=20)	Female Victims (n=151)	Total (n=171)
	Per Cent	Per Cent	Per Cent
Imprisonment	15.0	42.4	39.2
Imprisonment*	10.0	15.2	14.6
Probation	65.0	27.8	32.2
Probation*	5.0	3.3	3.5
Discharge	5.0	6.0	5.8
Other	—	5.3	4.7
TOTAL	100.0	100.0	100.0

* Additional conditions, e.g., mandatory treatment.

Summary

The Committee recognizes the constraints that exist in relation to the allocation of resources and personnel available to child protection services. The Committee also acknowledges the crucial importance of sensitively and effectively provided assistance to sexually abused children rendered by child protection workers. These workers have a difficult and complex mandate to fulfill, one not facilitated by unjust criticism of their work.

In recognizing these concerns, however, **the Committee believes that there are commanding reasons, as documented in the child protection surveys undertaken across Canada, to conclude that the work of these services in relation to child sexual abuse must be sharply strengthened, augmented and more effectively co-ordinated with the services provided by other helping professions.**

One of the main dilemmas documented in the Committee's research is that, in many respects, child protection workers serving sexually abused children worked too much on their own and did not co-operate closely or effectively enough with other public services. **The findings show that there was fragmentary and insufficient contact with medical services and that relations with the police were often brief and did not result in joint co-operation or follow-up. Many other available public services and community associations were relatively seldom turned to for assistance, counsel or co-ordination of care.**

At a time when resources for all types of public services are limited and becoming more difficult to obtain in relation to meeting potentially infinite service needs, no single group can reasonably expect that it will be assigned its full requested quota of personal and public funding. In the Committee's view, there is a more important issue than the sheer volume of resources assigned to a particular service, namely, the need for continuous and effective co-ordination of efforts between public agencies providing complementary services to sexually abused children.

A second dilemma and, in this instance, a serious deficiency in the application of child protection practice, is the relative lack of sufficient assessment of cases of child sexual abuse and inadequate follow-up of cases assigned to the care of these workers. The surveys' findings show that many victims, parents, offenders and the children's brothers and sisters were not interviewed by workers. Of cases resulting in either child welfare or criminal court hearings, in a sizeable proportion of these cases it was found that child protection workers either had not been involved in these hearings or trials or were uninformed about what had happened to the children in their care (or whose cases had been assigned to them for long-term monitoring).

In the Committee's view, there can be no doubt in relation to both of these issues — the need for more complete assessments and for a more effective and long-term follow-up of cases — that the protection afforded these children must be strengthened and that this must be done promptly by the levels of government concerned.

Throughout this chapter, the point has been reiterated that certain types of information were missing, unreported or unknown. In this regard the Committee recognizes a distinction between types of information which it would be useful to have about victims, their experience and suspected offenders, and those facts which are essential for the assessment, provision of care and follow-up of these children.

The records of public agencies concerning persons being served are not just the personal repositories of observations made by workers. They are essential documents recording the experience, needs and outcomes of services provided to sexually abused children. In light of the reported high level of staff turnover in many child protection agencies across Canada, the need for sufficiently detailed and reasonably complete case records is even more apparent.

This is a matter that, in the sphere of medical care, has received considerable public and professional attention and that has resulted in the professional review of patients' charts as constituting an essential and important component in relation to periodic accreditation of hospitals. An analogous review procedure is warranted in relation to the completeness and adequacy of child protection records maintained for sexually abused children.

Chapter 29

Intervention Strategies

A review of the child protection research literature and reports about the operation of different programs reveals that opinion and practice vary widely about the best means to intervene on behalf of, and ideally to help, sexually abused children and their families. Among the issues involved, the greatest area of disagreement revolves about the respective merits of what are referred to here as the child-centred and family-centred intervention approaches.

In its review, the Committee found that the adoption of one or other of these prototypical models, or in some instances the inclusion of elements of both approaches, varied widely across Canada. Both approaches are grounded on two fundamental premises of social work, namely, a recognition of the inherent worth of all persons, and an acknowledgment of their right to receive assistance. The main intervention strategies in some degree allow for the provision of services for each person involved in an incident of child sexual abuse. Beyond these common elements, the children served by child protection workers adhering principally to one approach are served substantially differently than those cared for by workers following the alternate means of intervention. Where these contrasting models of intervention differ is in the relative emphasis given to:

1. The involvement of legal, enforcement, health and other social service professionals in the assessment of and intervention on behalf of cases served by child protection agencies.

2. The adoption of a child-oriented or a family-oriented approach in the provision of services.

3. The belief that child sexual abuse is a distinctive problem to be dealt with separately from other problems affecting the well-being of children and their families, or whether it is a problem inextricably bound up in more deeply rooted familial difficulties, and as such, that it cannot be effectively dealt with by itself.

In this chapter, the development of these different approaches is reviewed, an outline is given of the main assumptions of the two principal approaches, and findings drawn from the National Child Protection Survey and those

undertaken in Quebec and Ontario are considered in relation to the operation and consequences for sexually abused children of these intervention strategies.

Development of Different Approaches

In undertaking its review of child protection services for sexually abused children, the Committee found that relatively little had been written concerning the Canadian experience about the different ways of organizing and providing these services or comparing their relative effectiveness in achieving their intended purposes. As noted in the review of provincial child welfare legislation, these statutes do not define child sexual abuse nor do they set out with precision the procedures to be followed in the assessment of these cases. The operational practices that have evolved come in part from a broader tradition in the child welfare field involving the provision of assistance to neglected children and their families, and in particular, have been influenced by developments in the United States concerning the care of sexually abused children.

Although several distinctive intervention strategies in relation to the provision of services for sexually abused children have been in operation across Canada for a number of years, the Committee found that the staff of these programs often either did not know of the existence of other programs or that they had little information about how they operated. Instead, there has been a proclivity to visit and compare Canadian experience with programs elsewhere, primarily those initiated in the United States. In each instance, where a major Canadian program has been developed, either American research has been cited as justification to develop the new program, the senior persons involved in promoting or administering these services have visited or consulted American programs, or American experts have been invited to Canada to consult with child protection personnel. Because of this ingrained feature, it is pertinent to consider briefly the nature of the programs drawn upon as the basis for developing and justifying the various Canadian intervention strategies.

On the basis of reports provided to the Committee by the *United States National Center for Child Abuse and Neglect*, it appears that up to 1982, there had been no comprehensive comparative review for that nation of the growing number of special programs developed to serve sexually abused children.[1] Since most of the programs had been in operation for a short time, the research undertaken had focussed on the organization and provision of services and had not dealt directly with a consideration of their impact in benefitting children. In this connection, the *U.S. National Center* noted the ethical and practical difficulties involved in setting up experimental and control child protection services and the absence of appropriate and agreed upon criteria upon which to base such evaluations. In this regard, the findings obtained for Canada by means of the National Child Protection Survey draw upon and compare the experience of programs which have evolved for different historical reasons. In recent times, it is generally recognized that in his 1962 report on the *Battered-Child Syndrome*, paediatrician Henry Kempe of Denver drew wide public and

professional attention to the complex issues involved in child abuse, the need for a team approach and the requirement that there be long-term follow-up of these children. At that time, Kempe advocated that medically verified cases of child abuse should be reported to the police, that physicians should be familiar with how to assemble reliable forensic evidence and that there should be a close liaison between physicians, child protection workers, the police and the courts.

On the question of to whom these reports should be made, and whether the submission of such reports should be mandatory or made on a discretionary basis, a cleavage occurred that was to remain a central point of contention in the field of child welfare. In Kempe's report and the guidelines subsequently proposed by the U.S. Children's Bureau, it was recommended that there be mandatory reporting to the police of all suspected cases. It was argued that where criminal acts were suspected, they should be investigated by the police who were accessible on an around-the-clock basis.[2] In contrast to this position, the American Humane Society issued its guidelines in 1963 which recommended that reports of child abuse should be made to child protection services. Social workers, it was asserted, were better prepared to deal with these problems than were the police and they were able to provide abused children with needed counsel and treatment.

The guidelines recommended by the U.S. Children's Bureau were also rejected by the American Medical Association on the grounds that physicians had been singled out as the only professional group responsible for reporting. The Association was also concerned that the mandatory reporting of cases would be counterproductive, since parents of injured children would avoid bringing them to receive medical care.

The substance of this debate as to which system — civil law or criminal justice — should be responsible for the management of child sexual abuse is still an unresolved and contentious issue. Over a decade and a half after the issuing of his 1962 report, Kempe reiterated his previously expressed concerns. In his 1978 Aldrich Lecture to the American Academy of Pediatrics, he called for a developmental approach to the long neglected problem of child sexual abuse. He argued that such abuse must be stopped — absolutely. Disagreeing with the growing emphasis upon family therapy and reunification, Kempe concluded that: "reuniting families should not be the overriding goal. Rather, the best interests of the child should be served."[3] In order to achieve this purpose, Kempe argued that the jointly provided services of professionals in social work, law and medicine were required. He also recognized the need to adjust and evaluate constantly the services being provided. "Ultimately, treatment can be judged to be successful only many years later, when the child has grown up and made a success of life."

The *U.S. National Center for Child Abuse and Neglect* has identified a number of programs in the United States developed for the care of sexually abused children.[4] The most distinctive of these programs in terms of their contrasting philosophies are the Sexual Assault Center of Seattle and the Child Sexual Abuse Treatment Program of Santa Clara County, California. Other

programs have also been established in: Washington, D.C.; Chicago; Philadelphia; and Knoxville.

The review of reports of the American experience with different intervention strategies providing services for sexually assaulted children indicates that firm conclusions cannot be drawn from these sources in relation to a number of important issues. This research has focussed more on the organization of intervention models than on the outcomes achieved by these services. The documentation available on occasion relies on an inadequate methodology, deals with the experience of small and unrepresentative groups of persons, does not sufficiently indicate the nature of the protection provided, and does not focus on the long-term experience of victims or offenders. Until these and other types of information are available, it is premature to consider one or another of these approaches as having unmistakably been a "proven" success.

The American experience with different intervention strategies illustrates the difficulties involved in the selection of appropriate measures as the basis for the comparison of the efficacy of different programs. It is apparent, for instance, that assessing the proportion of families that stay together following an episode of child sexual abuse, or the proportion of families which may be reunified after such incidents, are not by themselves sufficient measures of the nature of the protection afforded children, or of whether the sexual abuse has in fact been stopped. It is evident for Canada that comprehensive and reasonably firm documentation and evaluation of these kinds of programs is essential, and that in this regard, only a modest and incomplete start has yet been made.

Child-centred Approach

This intervention approach combines the elements of interdisciplinary teamwork, a victim orientation and the use of child protection workers who are specifically trained to deal with cases of sexual abuse. Its strategy is equally applicable in situations where the victim lives or does not live in proximity to the offender. Its philosophy rests on three assumptions:

1. The primary focus of service should be the victim, even though considerable attention may be paid to the offender.

2. Any type of sexual contact between minors and adults is considered to be morally wrong and damaging to the child.

3. The adult offender is totally responsible for any abuse which occurs.

With these assumptions in place, the model labels child sexual abuse as a crime and relies upon the criminal justice system as an essential procedural element. Inherent in this approach is the co-ordination of treatment between medical and child protection services which are deemed to be essential to assure protection for the child.

In the review of Special Community and Social Service Programs, it was noted that a number of interdisciplinary teams and co-ordinating committees had been developed in several parts of Canada. This type of liaison has operated effectively in some communities on an informal basis; it has included social workers, police, physicians, teachers, Crown prosecutors, ministers and other persons. In these communities, the idea of establishing interdisciplinary teams in neither a new nor a revolutionary development.

What has changed in recent years is the formalization of these of initially loosely structured practices and the evolving comprehensiveness of the scope of the services provided. This model now draws upon personnel from child protection agencies and medical settings, the police and Crown prosecutors working together and following standardized guidelines for the intervention and co-ordination of their efforts to help abused children. Where this model is followed, teams with representatives from these fields meet on a regular basis to discuss new cases and follow up open cases. Decisions about the children and their families are arrived at jointly.

Just as the philosophy of the model seeks to engender a smooth co-ordination among all services dedicated to the protection of abused children, it also takes as its primary concern the well-being of the child. From the initial reporting of an allegation of sexual abuse, the needs of the victims are considered to be paramount. It is considered essential that each person meeting the victim communicates that his or her account is believed, that he or she has done nothing wrong, that he or she is not responsible for what may happen to the offender, and that he or she realizes that assistance will be provided.

The victimized child must only describe the sexual abuse incurred to as few outsiders as possible, typically, the child protection worker and the investigating police officer, who in turn, share this information with other members of the interdisciplinary team. Where it is deemed necessary, a medical examination may be undertaken to assess and treat injuries. Additional intervention may include: crisis intervention or long-term counselling by child protection workers; individual and/or group therapy by the staff of a hospital's sexual abuse unit; or treatment and counselling by community family doctors and psychiatrists. Family therapy, with or without the offender, may also be undertaken.

In cases where offenders reside with victims, they are required to leave the home. Wherever possible, the apprehension of the child is avoided. It is recognized in the child welfare field that the child's removal from his or her home and placement in an alien environment risks compounding any emotional injuries that may have already been suffered by young victims. Removal from the family may also contribute to the child's feeling of guilt and worthlessness.

Before deciding whether it is appropriate to leave a child in the custody of the non-offending parent, the child protection worker involved in the initial investigation of the case must make an assessment of the non-offending parent (usually the mother). If the victim-oriented goals of the model are to be

achieved, the child must remain in an environment which affords him or her the maximum degree of emotional support. Thus, the non-offending parent, almost invariably the mother, will be left in charge of the victim only if her words and actions indicate that she does not blame the child, that she believes the child's complaint, and that she will be emotionally supportive (e.g., will place no pressure on the child to withdraw or alter his or her complaint). Also, the custodial parent must be willing to abide by any court order that prohibits the offender from having any communication or contact with his family. If the non-offending parent does not fulfill these requirements, it may be necessary to remove the child from the home.

Realizing the impact that the abusive situation may have on the non-offending parent, she (he) is provided with help, counselling and financial/environmental assistance from the child protection agency and group therapy (with a strong emphasis on assertiveness-training) from the children's hospital.

Simultaneously, if the initial investigation uncovers evidence that a serious sexual offence has been committed against a child by a parent or guardian and it appears that the child is in imminent danger of further harm, an investigating police officer is immediately required to arrest the offender and to charge him under the *Criminal Code*. In less severe cases, the police are instructed to consult with the staff of the child protection agency and medical personnel and to obtain permission from a Crown prosecutor before laying criminal charges.

A number of benefits may result from this policy emphasizing the charging of sexual offenders. First, by arresting the offending parent as quickly as possible, the victim is removed instantly from further peril. Second, arresting the offender is seen as a salutary means of breaking down his power over the rest of the family. Finally, it is argued that application of this policy is of therapeutic value to the offending parent. Advocates of charging contend that the shock of being arrested can break down the abuser's rationalizations that there is nothing wrong with his relationship with other members of his family; the arrest is seen as an "icy shower" capable of bringing the offender to his senses and making him realize that he has a serious behavioural problem. Moreover, the prospect of being sent to prison may frighten the abuser into agreeing to receive treatment. Thus, proponents of this model of child protection argue that the policy of arresting sexually abusive parents serves the best interests of both the child and the offender.

Recognizing the culpability and pathology of the offender, before proceeding along these lines, the advocates of this model seek to evaluate the situation not only of the victim but also that of the offender. A psychological assessment of the abusing parent may be ordered (and is usually carried out by a private practitioner) to determine the severity of the accused's psychosocial problems. When the offender has been charged with a less serious offence, the findings from this assessment may influence the decision on how to proceed. Where appropriate, the offender charged with a less serious offence is offered a choice between seeking treatment and being tried for his offence. The abuser usually is released on his own recognizance, with the stipulation that he abstain from

having any communication with his family. The primary avenue of treatment, where prosecution is stayed, is a unit operating in a children's hospital. Any failure by the abusive parent to attend treatment sessions, or to make a serious effort at correcting his behavioural problems, is reported in writing by the treatment facility to the Crown prosecutor; such lapses may trigger a resumption of prosecution. Thus, the offender is given a tangible incentive to work earnestly at rehabilitating himself.

Where the decision is made to proceed to trial in the case of an offender charged with a less serious offence, and the accused is convicted, he is often placed on probation conditional upon his seeking treatment. It then will be the responsibility of the offender's probation officer to arrange treatment and monitor the probationer's progress. Ideally, the probation officer reports back to the child protection agency as to any improvement in his client.

Where an abusive parent has been charged with a more serious offence (e.g., sexual intercourse with the victim), the policy dictates that there be no discretion to stay prosecution: the accused must stand trial. Every effort is made to persuade the accused to plead "guilty", and then to offer him treatment. Such treatment continues up to the sentencing date. If the personnel providing treatment feel that the accused's treatment will be cut short prematurely by an early trial date, they will so advise the Crown prosecutor who then may move for a postponement. Where the accused has pleaded "guilty" to, or has been convicted of, a more serious offence, he generally is required to serve a prison sentence. Although hospital personnel visit the prisoner occasionally, these visits only constitute a support service.

If the abusing parent is to be tried for his offence, the legal system continues the efforts made by social services, police and medical personnel to provide emotional support for the victim. Certain Crown prosecutors are assigned to child sexual abuse cases; these prosecutors have developed special skills in communicating with the sexually victimized child. A standard practice of these Crown prosecutors is to take the victim into an empty courtroom before the commencement of the trial, and explain the workings of the court to him or her. The child is thereby placed at ease in an otherwise forbidding environment and is given some sense of what to expect when called upon to testify. In an effort to reduce the potential trauma to the child still further, the Crown prosecutor usually moves to have the court cleared during the child's testimony. In child protection proceedings, the Committee learned that on occasion testimony is given in the Judge's Chambers. The Committee has no means of assessing the success or failure of this approach.

In summary, the main purpose of the child-centred approach is that all members of the interdisciplinary team should focus their intervention primarily on the child, while also providing service to others involved in the problem.

Family-centred Approach

In contrast to the child-centred approach, the distinguishing features of the family-centred approach are its emphasis upon multidisciplinary consultation, its family orientation and its reliance upon the employment of child protection generalists. The adoption of this intervention strategy is most relevant in situations where the victim and offender are related. Its philosophy rests upon three main premises.

1. The primary focus of attention is the family and it is within the context of meeting its needs that those of the sexually abused child are best served;
2. Children have the inalienable right not to be assaulted, and they are entitled to live in their natural homes.
3. Intervention in the affairs of a family is more effectively and ethically achieved when this is done on a voluntary basis.

Inherent in this philosophy is the assumption that the criminal justice system should be used as a last resort, since, by necessity, it is disruptive to the family, including the victim. In contrast to the emphasis upon interdisciplinary teamwork in the child-centred approach, it is a characteristic of this model to regard legal, health and other social services as supplementary to the work of child protection personnel. Decisions concerning cases are made according to standardized guidelines set down within the agency; consultation with experts in social work, medicine or psychology enhances the decision-making process. In this regard, the agency acts as the co-ordinator among all organizations which may be involved with the family and serves as an overseer of the child's best interests.

In light of its conceptual premises, it is not surprising that this model stresses therapeutic intervention rather than reliance upon the criminal justice system. It is believed by advocates of this model that recommendations are rarely made involving the laying of charges against an offending parent. Where there is reason to believe that a child is in trouble and requires assistance, the standard procedure is to assess the needs of the child and his or her family, and based on the assessment, to propose voluntary measures to the child and his or her parents. These voluntary measures may include the family's acceptance of any of a variety of services, including: visits by a social worker; family counselling; temporary placement of the child in foster care; and medical or psychiatric care. By offering these services to family members as voluntary measures which require their consent, it is believed that the family's co-operation can usually be obtained without necessitating formal legal action. The implementation of these voluntary measures is carefully scrutinized and regularly reviewed to ensure that they remain responsive to the needs of the child and his or her family.

Only where the family in question refuses to consent to the proposed voluntary measures, and the child's situation remains unsatisfactory, is formal legal action taken. The family is brought before a child welfare court or, less

often, the offender may be tried in criminal court. In cases necessitating judicial involvement, a child protection worker may act on behalf of the child, ensuring that the court is informed of the child's wishes and feelings. Where a child must appear in court, the agency provides an escort in order to provide comfort and emotional support.

This model also takes into account the fact that there are certain situations in which the child is in real and imminent danger, and cannot remain with his or her family without being subjected to an unacceptable risk of harm. In such situations, emergency measures are applied. The child is apprehended and placed in foster care until a court hearing is convened to have the child declared to be in need of protection. Even after such a declaration has been made, the agency's first priority, according to this model, is to provide treatment and service aimed at restoring the family to a safe, adaptive environment for the child, and ultimately, at reuniting the child with his or her parents. Such treatment may involve family therapy or counselling for family members.

The approach to intervention represented by this model is clear in principle: the decreased use of the criminal justice system and an emphasis on the promotion of voluntary therapy primarily provided by child protection workers. Stemming from this orientation is the perspective that child sexual abuse by a family member is only one, but a severe symptom of family instability which includes other difficulties and stresses which must be ameliorated to ensure that the abuse of the child will be stopped. In undertaking this demanding form of intervention, it is believed that child protection workers experienced in a wide range of casework techniques are best suited to work with these children and their families.

Comparison of Intervention Approaches

The conceptual premises of the two prototypical approaches involving the provision of child protection services for sexually abused children have been outlined as they are optimally expected to be applied in practice. In each instance, the application of these premises is contingent upon the training and professional altruism of the workers involved, the nature of the financial and manpower resources available to child protection services, the flexibility and spirit of innovation kindling the work of the organizations providing these services and, above all, the concerns and demands of the persons living in the communities being served.

In its meetings with experienced child protection workers across Canada, the Committee found that in provinces, or regions within provinces, where the principles of either of the two main intervention approaches had been adopted, each was accorded considerable loyalty by the workers involved. From the perspective of child welfare theory, each approach has decided strengths and weaknesses.

In the child-centred approach, the formation of an interdisciplinary team enables a sexually abused child and his or her family to receive help from several specialists whose services are complementary. The work of the team is intended to streamline the provision of needed care and provide maximum protection for the child. The sharing of information by a team decreases the necessity for the child to repeat the intimate details of the offence to several outsiders. Co-operation with the criminal justice system heightens the chances of laying charges and of successfully obtaining convictions or agreements by offenders to receive counselling and/or treatment.

Where teams have been established, the regular and continuous review by interdisciplinary members may serve as a means to reduce stereotypical and derogatory biases about the abilities of other professionals and replace these by a sense of mutual respect. (Discussions held with a considerable number of professionals revealed that they often saw their profession as the only one capable of helping the sexually abused child).

According to the 1982 report of the *Metropolitan Toronto Chairman's Special Committee on Child Abuse*:

> Joint investigations by the Police and the C.A.S. produce many problems from the perspective of both agencies. C.A.S. workers are concerned, for example, that the Police in some circumstances appear reluctant to initiate or continue an investigation. They are also uncertain as to their role once the Police are involved. The Police, on the other hand, are anxious that the C.A.S. not interfere with the offender and that they maintain their distance during the Police investigation. The Police also feel that C.A.S. workers have unrealistic expectations as to their capacity to predict the result of criminal proceedings. In their view, joint consultation is only useful if it occurs immediately after the offence is reported and investigated.[5]

Similar concerns have been raised by participants in a child welfare-criminal justice workshop in British Columbia: confusion over roles, frustration at the lack of results achieved by other professionals, lack of understanding of other services and inadequate training about sexual abuse by other disciplines, as well as their own.[6] In commenting upon these problems from the perspective of a program which had been in operation for several years, the Co-ordinator of the Child Abuse Program in Manitoba recognized that "there is a growing need for 'teamwork' development, i.e., training packages which assist regional teams to define their roles and responsibilities, outline clear procedures and processes".[7] Many of these problems stem from interdisciplinary ignorance, a lack of procedural consensus and contrasting views about how best to proceed in serving the interests of sexually abused children. An increased level of co-operation between the professionals involved in assessing and intervening in cases of child sexual abuse, if coupled with clear, standardized guidelines on professional roles, might serve to alleviate some of the present difficulties in the present interdisciplinary system of protecting children.

Conversely, a system of multidisciplinary consultation, as contrasted to interdisciplinary teamwork, also has distinct advantages. In this system in which one agency retains the position of primary care giver, children may be

less likely to be lost in interagency shuffles. Prestigious and powerful professionals cannot coerce or direct the actions of less socially esteemed or powerful colleagues. The problem of a betrayal of ethics by breaching pledges of confidentiality may be lessened. Front-line professionals, overwhelmed by substantial caseloads, may be spared the further burden of a continual series of additional meetings.

The victim-oriented stance of the child-centred approach ensures maximum physical protection for the child, while not depriving him or her of the familiar comforts of home. Through its belief in the veracity of children and its labelling of sexual abuse as criminal behaviour, it provides the victim with an emotionally vindicating experience; in effect, it says to the child: "society thinks what was done to you was wrong, no matter what you did, and will punish the offender who hurt you". Accordingly, the child is afforded protection under the law.

The family-oriented approach, in its turn, may be more sophisticated about the psychosocial dynamics of families. It strives to minimize the emotional, social and economic impact that the separation of the family may have on all of its members, including the victimized child. The child is thus not placed in the position of believing that he or she has been responsible for having sent his or her father to jail, or of reducing his or her mother to becoming a welfare recipient.

The family-centred approach of seeking to obtain the voluntary consent of family members to receive counselling and other recommended services provides a safeguard against the possibility that a court hearing may deny an agency's application to have a child found to be in need of protection, or to involve itself with a suspected offender who is found to be guilty, thus leaving child protection workers in an untenable position in working with hostile families. This approach is designed to ensure that, in practice, the criminal justice system either does not impinge, or that this type of intervention occurs infrequently, upon the integrity of the family.

The application of the family-centred approach presupposes that child protection workers can reach these crucial decisions about the best means of protecting sexually abused children and serving the needs of their families largely upon the basis of their own professional judgment and that of their immediate colleagues or supervisors. As the findings given in Chapter 28, *Provision of Child Protection Services*, have shown, the decisions reached in many cases may fail to achieve these intended purposes. The application of this approach may also inadvertently give rise to a situation where the offenders in a family are enabled to continue to commit offences proscribed by the *Criminal Code*.

Operation of Intervention Strategies

Recognizing the different aims, benefits and limitations of the two main intervention strategies adopted in relation to the provision of child protection services for sexually abused children, the Committee considered the findings about the operation of contrasting programs in light of its assigned mandate. In each instance, it was recognized that there would likely be a gap between the purposes ideally intended and their actual implementation in practice.

The findings obtained about the operation of these different intervention programs are more cogent than those which might be obtained in an artificially contrived experimental study since they pertain to services which were actually being provided. In this regard, the findings afford an unusual review of the consequences of the decisions taken in relation to the care of these children.

On the basis of their conceptual premises, it would be expected that the operation of each main intervention approach would result in proportionately more or fewer types of particular services being provided to victims and their families. In the case of the child-centred approach's philosophy, for instance, it would be expected that its implementation would entail: a relatively high level of interdisciplinary involvement; without the requirement of court orders, a low level of counselling received by offenders and spouses; a high proportion of children remaining at home; after notification had occurred, a low proportion of offenders remaining at home; a high proportion of children living at home without offenders during or towards the end of an agency's intervention; a high level of cases being brought to child welfare court; a high proportion of charges being laid against suspected offenders; and a relatively high level of convictions obtained in criminal court.

In contrast, except for a high proportion of children remaining at home, it would be expected that the operation of the family-centred approach would produce results opposite to the intended outcomes of the child-centred approach.

The findings obtained by the National Child Protection Survey and those for Quebec and Ontario indicate that:

1. On a regular basis, two provincial child protection programs tended to follow the child-centred approach.
2. Two provincial child protection programs tended to follow the family-centred approach.
3. Other provinces variously adopted elements of both intervention approaches, and in some instances, appeared to have no consistent operational approach in serving sexually abused children.

The findings given in Table 29.1 group together the results for the two provinces following the child-centred approach and those for the two provinces following the family-centred approach. The results for the other provinces are listed separately. To highlight the nature of the services provided, the findings

are given as a proportion of the cases documented for particular jurisdictions. There is no identification of the experience of particular provinces (the results for the Yukon were not included since only a small number of cases was documented). Because of the sensitive and evaluative nature of the research undertaken, it was agreed, as a condition of obtaining this information, that the anonymity of particular programs would be preserved. The findings clearly show, however, that in seeking to serve the needs and interests of sexually abused children, there is a need for more sunshine concerning the public review of these programs.

Promptness of Initial Assessment

In relation to how quickly the initial assessments of sexually abused children were undertaken, the child-centred approach ranked second in this regard, while the family-centred approach ranked the lowest among all jurisdictions. These trends also occurred with respect to the proportion of victims having a medical examination. In each instance, there was a prompter assessment of the needs, both psychological and medical, of children served by the child-centred approach than those served by the family-centred approach. The experience of programs in other provinces varied in both of these respects.

Contacts With Other Services

Workers following the family-centred approach were the group which most frequently contacted other types of social services, and conversely, made proportionately the fewest contacts with the police, and were above average in terms of consulting physicians. In contrast, children served by workers following the child-centred approach had a high proportion of contacts made on their behalf with physicians and the police, and other types of social services were initially contacted in only one in eight cases. One other province tended to follow this high level of interdisciplinary consultation, while in four provinces, there was a relatively low level of contacts with physicians, and in two provinces, there were infrequent contacts with the police.

Family Members Contacted

Regardless of the intervention approach followed, the results were generally comparable in all parts of the country in relation to contacts made with different family members. However, in relation to the types of family members who had not been contacted, some remarkable variations occurred among specific provincial programs. Instances where no contacts had been made included: two in five victims (38.1 per cent); one in three mothers of victims (33.3 per cent); three in four fathers (76.1 per cent); four in five siblings (80.9 per cent); and over nine in 10 suspected offenders (95.2 per cent).

Table 29.1

Services Provided Sexually Abused Children by Provincial Child Protection Programs

Services Provided and Outcomes for Sexually Abused Children	Provincial Programs							
	Child-Centred Approach (Two Provinces)	Family-Centred Approach (Two Provinces)	Province Five	Province Six	Province Seven	Province Eight	Province Nine	Province Ten
	Non-Accumulative Percentages							
Immediate Assessment	69.6	28.7	41.4	76.1	60.0	50.0	—	54.2
Organizations Contacted								
• Other Social Services	12.9	38.0	7.1	17.4	12.5	—	—	5.1
• Physicians/Hospitals	56.7	25.4	18.2	73.9	21.9	4.8	—	25.4
• Police	83.6	25.9	57.6	89.1	38.1	42.9	—	52.5
Persons Contacted								
• Victim	89.5	78.4	75.8	91.3	71.3	61.9	—	72.9
• Mother	82.0	80.5	66.7	89.1	70.6	76.2	—	79.7
• Father	36.3	60.8	27.3	23.9	40.0	33.3	—	30.5
• Brothers/Sisters	50.9	40.6	35.4	73.9	35.0	19.1	—	42.4
• Offender	47.3	59.6	23.2	82.6	33.1	4.8	—	39.0
Medical Examination	56.7	27.1	30.3	63.0	45.6	38.1	56.7	61.0
Child Protection Services								
• Counselling victim	57.9	34.2	26.3	71.7	54.4	47.6	22.4	55.9
• Counselling offender	19.3	33.5	7.1	60.9	20.6	9.5	12.7	13.6
• Counselling family	30.4	33.3	8.1	50.0	28.1	61.9	—	27.1
• Marital therapy	8.2	1.2	6.1	15.2	16.9	9.5	—	10.2

(Continued . . .)

Table 29.1 (continued)

Services Provided Sexually Abused Children by Provincial Child Protection Programs

Services Provided and Outcomes for Sexually Abused Children	Provincial Programs							
	Child-Centred Approach (Two Provinces)	Family-Centred Approach (Two Provinces)	Province Five	Province Six	Province Seven	Province Eight	Province Nine	Province Ten
	Non-Accumulative Percentages							
Child Protection Services								
• Family therapy	22.2	0.5	19.2	15.2	28.8	14.3	—	28.8
• Victim/offender counselling	6.4	0.2	—	—	2.5	—	—	5.1
• Psychotherapy: victim	4.1	—	—	8.7	3.1	14.3	6.6	8.5
• Psychotherapy: offender	2.9	0.2	1.0	19.6	3.8	4.8	10.5	5.1
• Psychotherapy: family	2.3	—	—	—	1.9	14.3	—	—
• Crisis intervention: victim	9.4	0.7	—	—	22.5	47.6	—	3.4
• Crisis intervention: offender	2.3	1.0	—	—	12.5	19.1	—	—
• Crisis intervention: family	5.3	1.0	—	—	21.9	33.3	—	—
• Group therapy: victim	17.0	—	2.0	17.4	5.6	—	11.6	6.8
• Group therapy: offender	1.8	—	—	4.4	1.9	—	11.6	—
• Group therapy: family	2.9	—	1.0	4.4	3.1	4.8	11.6	1.7
• Counselling/treatment services accepted voluntarily	5.9	30.4	4.0	4.4	10.6	9.5	—	10.2
Separation of Family								
• Child remains initially	31.0	72.9	34.3	30.4	36.3	47.6	63.8	44.1
• Offender remains initially	36.3	18.8	39.4	28.3	47.5	47.6	30.3	44.1

(Continued . . .)

Table 29.1 *(concluded)*

Services Provided Sexually Abused Children by Provincial Child Protection Programs

Services Provided and Outcomes for Sexually Abused Children	Provincial Programs							
	Child-Centred Approach (Two Provinces)	Family-Centred Approach (Two Provinces)	Province Five	Province Six	Province Seven	Province Eight	Province Nine	Province Ten
	Non-Accumulative Percentages							
After Assessment								
• Family together	11.7	20.0	16.2	10.9	15.0	19.1	—	20.3
• Parent and child	24.6	8.1	19.2	13.0	16.9	33.3	—	20.3
• Parents together	21.6	7.1	21.2	15.2	16.3	4.8	—	20.3
• Offender and child	1.8	—	3.0	—	1.3	—	—	—
• Family apart	19.9	0.5	16.2	56.5	20.0	9.5	—	18.6
Present Residence of Child								
• In foster care	40.4	10.7	19.2	19.6	31.9	14.3	—	32.2
• Living on own	4.1	0.2	3.0	10.9	10.0	4.8	—	1.7
• With relatives	4.1	1.2	6.1	6.5	8.1	9.5	—	5.1
• With family without offender	28.1	3.1	25.3	37.0	21.3	33.3	—	32.2
• With family with offender	16.4	22.6	20.2	19.6	15.6	19.1	—	22.0
Voluntary separation	5.9	6.4	4.0	—	5.0	14.3	3.7	6.8
Court Hearings								
Child Welfare Court	46.8	13.8	33.3	56.5	24.4	9.5	32.2	37.3
Charges laid	40.4	8.1	33.3	54.4	19.4	23.8	58.7	27.1
Offender convicted	16.4	4.8	14.1	28.3	11.3	19.1	17.7	13.6
Case Closed	27.5	4.5	59.6	21.7	23.1	21.7	17.7	40.7

National Child Protection Survey, Quebec Survey and Ontario Survey, n=1438.

The findings indicate that there was no consistent practice across Canada with respect to contacting different family members of victims to obtain information concerning the cases being assessed, or where siblings also lived with resident suspected offenders, to ascertain the nature of the risks which they may have been facing.

Counselling and Therapy

As noted in Chapter 28, *Provision of Child Protection Services*, on average, child protection workers were found to provide a relatively limited range of services directly to victims and their family members. This finding is reaffirmed when the experience of different provincial programs is considered.

With two exceptions, those involving counselling by workers to suspected offenders and family counselling, the child-centred approach consistently provided more kinds of services to victims and their families than did the family-centred approach. Both intervention strategies were about equally likely to offer family counselling, with the family-centred approach doing this marginally more often than the child-centred approach. A sharp contrast occurred in the provision of counselling to sexually abused children: three in five (57.9 per cent) children served by the child-centred approach and one in three (34.2 per cent) served by the family-centred approach had received counselling from child protection workers.

Services Accepted Voluntarily

Although the child-centred approach, on average, provided more and a wider range of counselling and treatment services than the family-centred approach, these services were not as often accepted on a voluntary basis when the former rather than the latter approach was adopted. With the exception of the two provinces adopting the family-centred approach, elsewhere across Canada, the counselling of family members was typically received on an involuntary basis.

The family-centred approach is founded on the belief that the counselling provided by workers should be voluntarily received by the persons being helped. In about one in three cases (30.4 per cent), this purpose was realized, a level four times that of the child-centred approach. Despite this significant difference, however, the main finding in relation to how family members received counselling is that under all programs, regardless of the approach adopted, the great majority of family members received counselling on an involuntary basis.

Separation of Families

After provincial agencies learned of cases of child sexual abuse, in five provinces about two in three children were removed from their homes, in two provinces approximately a half were removed, and in three provinces between

two in three and three in four remained at home. These findings show that after notification of an incident of sexual abuse, whether a child was left at home or was removed is both a function of residence and the application of different child protection intervention approaches. In this regard, there was no uniform or consistent social policy across Canada.

This difference is the sharpest in relation to the operation of the two main intervention strategies. About one in three children (31.0 per cent) served by the child-centred approach initially remained at home. In contrast, over seven in 10 children (72.9 per cent) served by the family-centred approach initially remained at home.

The different programs across Canada and the two main intervention approaches also differed substantially in relation to whether the resident suspected offenders initially remained at home following notification to child protection agencies. The range in variation fluctuated by more than 100 per cent. In the family-centred approach, over four in five suspected offenders (81.2 per cent) were removed, a proportion that is about a fifth higher than cases served by the child-centred approach (63.7 per cent). Both approaches, however, were more likely to involve the removal of suspected offenders than was the case in four provinces where a higher proportion of suspected offenders stayed in the same homes with victims.

Present Location of Child

There is a 300 per cent variation across Canada in relation to the proportion of sexually abused children placed in foster care. Of children served by the child-centred approach, two in five (40.4 per cent) were in foster care, a proportion which contrasts with the about one in nine children (10.7 per cent) served by the family-centred approach. Considerably more of the children cared for by the child-centred approach than those served by the family-centred approach were likely to be living with their families without offenders being present, with relatives or on their own. An anomaly in the results obtained for the family-centred approach is that when the survey was undertaken, information on the whereabouts of almost three in five children (55.8 per cent) was unknown or was not reported. Since well over nine in 10 (95.5 per cent) cases were still open which were being served by agencies adopting the family-centered approach, this finding cannot be construed as being particularly reassuring in relation to the adequacy of their continued monitoring and followup.

Court Involvement

Corresponding directly with their enunciated premises concerning the use of legal sanctions or voluntary measures, the findings indicate that the two

main intervention approaches followed by child protection services make substantially different use of both child welfare and criminal courts. Of the cases served by the child-centred approach, there were between three and five times as many court hearings than those held for children served by the family-centred approach. Across Canada, three different trends occurred with respect to court hearings involving cases of child sexual abuse. On average, in four provinces a relatively high level of cases came to court, three provinces fell within an intermediate range, and in the three remaining provinces, the great majority of cases were handled without court intervention. On average, there is a direct relationship between the proportion of cases brought to criminal court and the proportion of offenders convicted.

Summary

In considering the findings of the National Child Protection Survey, the Quebec Survey and the Ontario Survey, the Committee also took into account the results of the other national surveys undertaken. From all of these sources, there is comparatively little documentation about the nature of the long-term effects of child sexual abuse, particularly in relation to the psychological harms which may have been incurred. In this regard, it was a consistent finding in the population, police and hospital surveys that while proportionately more victims were psychologically and emotionally harmed than those who were physically injured, the number of children known to have sustained any type of reported harm or injury was relatively small.

In the context of these general findings, it is recognized that the nature of the long-term benefits for sexually abused children resulting from the adoption of either of the two main child protection intervention strategies is unknown. Obtaining this type of information would entail the mounting of a carefully designed longitudinal study which obtained information from victims over a period of years. Even then, the results so obtained would likely be ambiguous and uncertain in their social policy implications unless the approaches being monitored were distinctively different at the outset in most salient aspects.

Before comparing the relative strengths and weaknesses of the main child protection intervention strategies and the nature of their short-term benefits for sexually abused children, it is pertinent to recall the findings of Chapter 28, *Provision of Child Protection Services*. Regardless of the approach taken, significant information was frequently unknown or unreported concerning essential elements in the services intended to provide protection for these children.

Allowing for these considerations in relation to the absence of sufficient information about potential long-term harms and incomplete information for certain aspects of the protection being afforded, it is evident that the child-centred approach in comparison to the family-centred approach provides more short-term benefits for sexually abused children. These documented benefits include:

- **More promptly undertaken initial assessments.**
- **More victims receiving medical examinations.**
- **Broader and more extensive consultation with other disciplines in relation to assessing the child's needs.**
- **A slightly higher proportion of victims, their mothers and their siblings being interviewed.**
- **A substantially higher proportion of victims being counselled, and overall, the more frequent provision of a broader range of counselling and treatment services for victims and members of their families.**
- **In two in three cases (63.7 per cent), after notification to an agency, the resident offender was removed from the home.**

The findings presented in this chapter indicate that a majority of the provinces did not follow any consistent practice in the provision of child protection services for sexually abused children. The provision of these services was unco-ordinated and lacked reasonable uniformity. While regional variation and flexibility may be hallmarks in the provision of social and medical services across Canada, their consequences for sexually abused children are that a child in one province received very different services and protection than a child in another province.

On the basis of the survey's findings, it appears that the child-centred approach is a more appropriate initial means of intervention affording more immediate protection for the sexually abused child and that the family-centred approach may be the more appropriate means of providing for the long-term assessment and care of victims and their families. However, regardless of the intervention approach initially adopted, the Committee believes it is mandatory for all cases of suspected child sexual abuse that a complete and comprehensive assessment be made of their needs and situation. In this regard, the survey's findings indicate that both main intervention approaches were seriously deficient in their application.

The Committee recommends that the Office of the Commissioner in conjunction with the Department of Justice, the Department of National Health and Welfare, Provincial Attorneys-General, Departments of Health and Child Protection Services and non-governmental agencies:

1. **Develop minimum standards of services to be provided by each of the main public services (police, medical and child protection services) in relation to the investigation, assessment and care of sexually abused children. These standards, pertaining to each service, should specify, among other considerations, that:**

   (i) **Every one must report cases of child sexual abuse to the police and/or to child protection services;**

   (ii) **It be mandatory that all cases of child sexual abuse that constitute sexual offences under the *Criminal Code* be reported to the police,**

   (iii) **An initial assessment is to be made promptly and no later than 24 hours following notification;**

(iv) **A medical assessment be made of the physical and mental state of all cases of child sexual abuse;**

(v) **There be clear documentation of services provided and that long-term monitoring be undertaken to assure that the child is at no further risk of being harmed; and**

(vi) **A procedure be established to review reports of child sexual abuse and ensure that the needs of the children are being adequately met.**

2. **That legislation be enacted to specify these standards and to assure that they are being met in the assessment and care of these children.**

The Committee considered whether the statutory authority under which child protection services function should specify child physical and sexual abusive assessment responsibility in addition to the broad concepts of neglect and protection. As documented in the Report, there can be no doubt that more adequate assessment of cases of child sexual abuse is required.

The Committee recommends that Provincial Ministers responsible for Child Protection Services:

1. **Review provincial child welfare legislation to ensure the specification of assessment procedures to be undertaken on behalf of sexually abused children.**

2. **Introduce any appropriate amendments to this effect.**

3. **Develop a standard protocol for the collection of information, assessments to be conducted, findings to be recorded and other necessary procedures (e.g., reporting, referrals, etc.).**

4. **Make this protocol widely available, particularly to those likely to have first contacts with sexually abused children and that instruction be provided in its appropriate use.**

The Committee believes that the present system of providing child protection services for sexually abused children across Canada is unjust. These children must be better protected and more equitably served.

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Volume 2

SEXUAL OFFENCES AGAINST CHILDREN

Volume 2

Sexual Offences Against Children

Volume 2

Report of the Committee on Sexual Offences Against Children and Youths

appointed by

The Minister of Justice and Attorney General of Canada
The Minister of National Health and Welfare

Canada

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Committee on Sexual Offences Against Children and Youths

August, 1984

The Honourable Donald J. Johnston
P.C., M.P.
Minister of Justice and
Attorney General of Canada

The Honourable Monique Bégin
P.C., M.P.,
Minister of National Health
and Welfare

Dear Mr. Johnston and Madame Bégin:

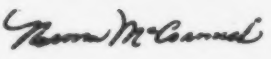
In accordance with the Terms of Reference assigned on February 16, 1981, we have inquired into and report upon the "prevalence in Canada of sexual offences against children and youths" and "the problems of juvenile prostitution and the exploitation of young persons for pornographic purposes".

In undertaking our mandate, we have received valuable assistance and support across Canada from all levels of government, the helping professions and many community and voluntary associations. Our findings show that vital changes must be made in order to afford Canadian children and youths better protection from all forms of child sexual abuse and exploitation.

The actions we propose provide a rational and co-ordinated framework whose implementation would assure a level of protection that is essential for young persons to have against sexual offences. In recognition of the child's vulnerabilities and special needs, efforts to provide better assistance and protection for sexually abused children and youths must be assigned high priority by the Government of Canada. These activities must be undertaken on a co-operative basis with the provinces and non-governmental organizations, and must be strongly co-ordinated.

We respectfully submit our recommendations. We do so unanimously.

Herbert A. Allard



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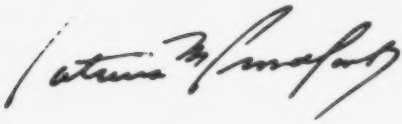

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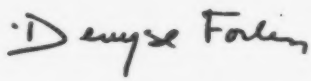

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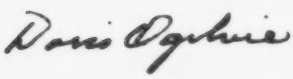

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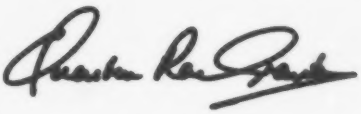

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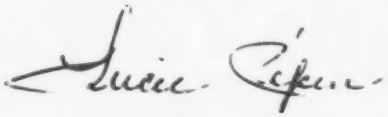

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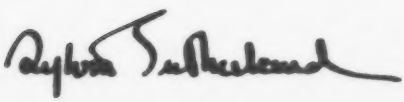

Sylvia Sutherland

Robin F. Badgley
Chairman

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Part VI

Health Services

Chapter 30

Research and Treatment Programs

In its Terms of Reference the Committee was asked to consider: "the elements of the offences"; means other than legal ones which are used "to protect children and youths from sexual abuse"; and the measures required to improve the protection afforded victims of these offences. Implicit in the Committee's mandate was a recognition of the fact that health services have an essential contribution to make in the treatment and protection of sexually abused children, a recognition acknowledged by the joint appointment of the Committee by the Department of Justice and the Department of National Health and Welfare and reflected in the Committee's interdisciplinary membership.

The information obtained by the Committee on sexually assaulted children who were injured and the medical care they received is presented in the chapters in this section of the Report. In this chapter, an overview is given of the issues identified by the Committee. This summary is followed by a synopsis of the Canadian medical research dealing with these matters and by a description of developments in the establishment and operation of specialized units for the identification and treatment of sexually abused children.

In the chapters that follow in this section, an analysis is given of: the findings of the National Hospital Survey (Chapter 31); the classification, for purposes of hospital and medical care statistics, of the diseases, injuries and conditions which were treated in relation to child sexual abuse (Chapter 32); the health risks associated with child sexual abuse in relation to live births, therapeutic abortions and the contracting of sexually transmitted diseases (Chapter 33;) a review of the genetic implications of incest (Chapter 34); and an overview of the practices of criminal injuries compensation boards (Chapter 35).

Sexual Abuse and Health-related Issues

A central concern of the Committee was the documentation of the nature and extent of the harms associated with the sexual abuse of children. The documentation of these injuries is a prerequisite to considering the nature and

gravity of the long-term harms experienced by these children, whether the medical care provided is adequate or might be improved, whether the harms incurred may constitute sufficient grounds to take custody of a child or serve as the basis for the laying of charges against an assailant by the police, and the nature, collection and preservation of evidence with respect to these injuries.

The classification of the elements of the sexual offences set out in the *Criminal Code* by the 1983 amendments which were proclaimed in January, 1983 underscores the need for having reasonably firm documentation of the nature and extent of injuries associated with sexual assaults. These amendments introduced the provision that made the causing of bodily harm an element of one form of the sexual assault offences; it also specified the wounding, maiming or disfiguring of a person by an assailant as elements of the offence of aggravated sexual assault. To the extent that the elements of these offences occur with respect to sexually assaulted children, their assailants may be charged. Conversely, to the extent that these elements are found not to occur, or in instances in which there is insufficient documentation of evidence, the more serious forms of the sexual assault offence will be inapplicable in the prosecution of these cases.

In its review of *Advisory Reports and Previous Research*, (Chapter 4), the Committee found that there was limited and largely inconclusive documentation concerning the injuries that were known to have resulted from incidents of sexual assault, whether the victims were children or adults. While in some reports dealing with these matters, it was concluded that a majority of sexually assaulted victims had been injured, in some instances seriously, the documentation upon which these observations were based either was fragmentary or was derived from the experience of a small number of victims who had been seen at a hospital clinic or a voluntary community referral agency. The assumption was made in some of these reports that the experiences of sexually assaulted children were similar to those of adult victims.

Little of the general community and social survey research for Canada available on these matters appears to have considered directly the extent and nature of the injuries sustained by sexually assaulted children. For these reasons, these sources cannot be drawn upon as a basis upon which to determine the extent of this problem, to assess the measures taken or those steps that might be effective in improving medical care, or to evaluate the potential utility of the provisions regarding injuries introduced by the 1983 amendments, as these pertain to sexually assaulted children.

In order to obtain documentation about the nature of the physical and emotional harms incurred by children who had been sexually assaulted, the Committee sought this information in each of its national surveys. Following a review of available medical research concerning the issues identified by the Committee, it undertook a separate study in which a number of major regional hospitals participated. These surveys, and in particular the National Hospital Survey, not only assembled extensive findings on injuries associated with sexual assaults, but also served as the basis for a review of the health services provided

for these children, of the extent to which other services were notified of these cases, and of ways in which medical services might be improved to afford better protection.

As the Committee undertook its review of sexually assaulted children who had been injured and of the medical services provided for them, it learned that in some quarters there were mixed reactions about the provision of existing health services. In some instances, sharp criticism was levelled at the medical profession and hospitals for their alleged indifference to these problems and the insensitive care that they provided for patients who had been sexually assaulted. At meetings which the Committee held with some non-medical child care specialists, it was reported: that some hospitals routinely turned away or gave a "brush off" to these patients; that the hospitals did not have adequate facilities; that their personnel were often inexperienced or poorly trained to deal with these problems; and that, of the sexually abused children who had been treated, few of these cases were reported to child protection services and the police. While such allegations were often voiced, they were seldom supported by reasonable evidence to document their validity. While the Committee neither accepts nor rejects these premises, in order to fulfill its Terms of Reference, it deemed it essential to obtain information on these issues, and in particular, on the medical assessment of injuries sustained by patients in incidents of child sexual abuse, and on the procedures taken in providing care for these children.

Counterbalancing the criticism directed at the provision of medical care for sexually assaulted patients, the Committee also learned of the operation of a number of specialized units across Canada which were seeking to provide exemplary and comprehensive care for sexually abused children. Several of these programs had evolved out of special units for physical child abuse established in the late 1960s and early 1970s. These programs were initially set up as a result of the growing recognition of the problem of physical child abuse, of which sexual abuse was known to be a component, but one that in relative terms, had received comparatively little medical attention. The available statistics on cases of child sexual abuse treated at some of these programs during this early period ranged between 7.7 and 13.6 per cent of the caseloads of child physical abuse.

Towards the end of the 1970s, there was a sharp increase in the number of sexually abused children referred for medical assessment and treatment. In several hospitals across Canada, either sub-units specializing in child sexual abuse evolved out of established programs for physical child abuse, or new, autonomous units for this purpose were created. In some instances, these services operated under the aegis of a hospital or a community-based co-ordinating committee having an interdisciplinary membership.

When the Committee undertook its review, apart from a number of in-house reports describing the work of these special hospital units, there was no listing or comprehensive review of the objectives of these programs, of the types

of services routinely provided, and of the experience of sexually abused children who had been assessed and treated. In the *1978 Child Abuse Study* sponsored by the Department of National Health and Welfare, a description was given of eight hospital-based child abuse and/or protection programs, but no information was provided about the procedures followed with respect to sexually abused children.[1] With the co-operation of a number of major hospitals across the country, the Committee assembled a profile of the services being provided for sexually abused children. A summary of the operation of some of these programs is given later in this chapter.

With respect to its mandate, the Committee identified four additional medical issues warranting special consideration. These concerns were with: the means used to classify sexual assaults and related injuries for purposes of hospital and medical care statistics; the extent to which children who had been sexually assaulted had become pregnant, had had a therapeutic abortion, or contracted a sexually transmitted disease; the genetic implications of incest for offspring of such unions; and the provision of compensation for sexually assaulted young persons.

In relation to the diagnostic identification of sexual assaults of children, the statistical system developed for the classification of diseases, injuries and causes of death that is used widely across Canada adheres to the concept of illness as pertaining to the individual. Thus, it permits the identification of only a limited number of the sexual acts that may be committed against a person (child or adult). This classification system, for instance, identifies the sexual deviation of *exhibitionism*, but not acts between individuals such as incest or sexual assault. The Committee's review of the system of disease classification, given in Chapter 32, was undertaken to assess how the diagnoses of sexually assaulted children were being classified and to determine the effectiveness of this system as a means of identifying these conditions.

The Committee reviewed national statistics in relation to child births and therapeutic abortions involving young girls. The Committee also considered the issue of sexually transmitted diseases that may have been contracted by children as a result of sexual assaults. Because of the stigma associated with venereal disease, it is generally believed that, despite regulations requiring the reporting of these diseases, few of these cases are brought to the attention of notifiable disease control programs. In the research on child sexual abuse, it appears that only a handful of studies has dealt with the associated risk of a child contracting a venereal disease. It is generally believed that few such cases occur.

An alternative approach is to consider cases of sexually transmitted diseases in which children have been treated for this condition, regardless of whether they may have been otherwise sexually assaulted. In this respect, the Committee was fortunate to be able to work in co-operation with a provincial communicable disease control program. Drawing upon its records of notified cases of sexually transmitted disease, the Committee reviewed the experience

of several hundred children who had contracted these conditions. The results of this review are given in Chapter 33.

With respect to the genetic implications of incest, it has been concluded in some quarters that since these risks are believed to be minimal or do not exist, there is no justification on these grounds for the retention of a special provision dealing with this offence in the *Criminal Code*. A number of research studies involving the discipline of genetics have dealt with these issues and a few reports have documented results in relation to children who were born as a result of incest. The Committee undertook a review to clarify this issue, with the findings given in Chapter 34.

In virtually all jurisdictions, an administrative board has been established whose function is to provide compensation to the innocent victims of crime. In recent years, a small but growing proportion of these awards has been made to the victims of sexual assault, including those who were children and youths. The practices of these boards and case studies of young victims are reviewed in Chapter 35, *Criminal Injuries Compensation Boards*.

Medical Research

In its review of medical research on child sexual abuse in Canada, the Committee identified five types of reports. These studies included:

1. *General Reviews*. These reports provided an overview of the general research literature. Their focus is variously on the etiology, classification and discussion of treatment procedures.

2. *Physical Child Abuse*. Several Canadian clinical research reports have documented the experience of physically abused children, of whom some were sexually abused children.

3. *Child Sexual Abuse*. The mounting of studies on this problem gained momentum during the 1970s; research along these lines had been undertaken at about half a dozen medical centres across Canada. The most extensive longitudinal studies on child sexual abuse for Canada have been carried out at the Centre Hospitalier Saint-Justine in Montreal.

4. *Incest*. The initial reports on incest involved the presentation of case reports on victims and/or offenders. In recent years, the experience of small groups of patients has been documented, most notably, at the Forensic Psychiatry Clinic of McGill University. A majority of the cases of incest reported in clinical research had been referred to psychiatric services by the police or remanded for assessment by the courts.

5. *Pedophilia and Exhibitionism*. Extensive research was undertaken on a small number of pedophiles and exhibitionists with the information on these sexual offenders having been obtained from police records or assessments of these patients made at forensic psychiatric clinics. The most complete reports have come from the Toronto Psychiatric Clinic (more recently retitled, the Metropolitan Toronto Forensic Service [Metfors]).

The findings of the fourth and fifth categories of clinical medical research are considered elsewhere in the Report. In the instance of the clinical results on incest, no information was available on the findings for patients in relation to their physical examinations and their physical injuries. Most of the studies on incest have dealt with the experience of suspected offenders and these reports have not provided a detailed description of the young victims of this offence. This approach also characterizes the research on pedophilia and exhibitionism in which the focus of attention has primarily been on providing an assessment of assailants. The limited information given about victims of these offences in these research studies is typically gleaned from reports about them provided by their suspected offenders.

In the following parts of this chapter, the conclusions and findings of the first three categories of clinical reports are summarized in relation to: the procedures followed in the identification and treatment of sexually abused children; the listing of findings based on the medical histories and physical examination of these patients; and information on the clinical assessment of the injuries which sexually abused children may have suffered in relation to these incidents.

General Medical Reviews

Canadian medical reports on physical child abuse which began appearing in the 1970s provided an overview of these problems and in a few instances the results of clinical research describing the experience of young children who had been treated. The Canadian reports in the former category acknowledged the work of Henry Kempe of Colorado, whose findings served as a catalyst in initiating the establishment of several comparable programs in this country.

In his research on the *Battered-Child Syndrome*, Kempe gave findings on 302 cases from a national survey of 71 hospitals across the United States. This 1961 survey found that 33 of the children had died and 85 had suffered permanent brain damage. Legal action had been taken in about a third of the cases for which a "proper medical diagnosis" had been given. For a majority of these cases, it was reported that charges had not been laid because there was insufficient evidence; the requisite medical examination procedures had not been performed; the injuries sustained by patients were deemed to be minor; or attending physicians were reluctant to initiate legal action. In commenting on these findings, Kempe noted:

> "... physicians have great difficulty both in believing that parents could have attacked their children and in undertaking the essential questioning of parents on this subject. Many physicians find it hard to believe that such an attack could have occurred and they attempt to obliterate such suspicions from their minds, even in the face of obvious circumstantial evidence. The reason for this is not clearly understood. One possibility is that the arousal of the physician's antipathy in response to such situations is so great that it is easier for the physicians to deny the possibility of such an attack than to have to deal with the excessive anger which surges up in him when he realizes the

truth of the situation. Furthermore, the physician's training and personality usually make it quite difficult for him to assume the role of a policeman or district attorney and start questioning patients as if he were investigating a crime."[2]

Drawing heavily on the reports by Kempe, Gil and other researchers who had studied these problems in the United Kingdom and the United States, a number of Canadian general review articles were written during the 1970s by physicians who identified issues and programs related to child abuse. The major themes dealt with in these review papers included:

1. *Physical Child Abuse.* All of these reports focussed on physical child abuse. The sexual abuse of children either was not dealt with or was listed only in passing as a component of physical abuse.

2. *Inadequate Statistical Information.* Most of the reports recognized that there was insufficient information on child abuse for Canada. Bell, for instance, noted in 1973 that "available statistics on child abuse in Canada are unreliable, and the true incidence is difficult to establish."[3] In the absence of reliable information for this country, there was a tendency in these reports to transpose the results of studies done elsewhere as though they were applicable to the Canadian situation.

3. *Need for More Comprehensive Reporting.* Several reports called for the establishment of more effective reporting systems in order to facilitate the more complete identification of child abuse and to serve as a basis for planning more effective treatment programs.

4. *Optional versus Mandatory Reporting of Cases.* The prevailing assumption in the reports was the belief that the ethical physician should exercise his or her discretion as to whether cases should or should not be reported to the authorities. Opinions on this issue were divided. Boone, for instance, recommended in 1970 that "where an accusation of battering has been made, this is a legal problem and must be reported immediately to the police."[4] This perspective was endorsed in 1976 by Segal who observed that "in the best interests of the child, he (the physician) is justified by law to make the report. He is protected by any loss or damage as a reprisal against making such a report, or giving evidence in courts."[5] In contrast, Jacobs noted in 1978 that "my own view is that mandatory reporting on general lines will achieve little, since it will be too difficult and costly to effect".[6]

5. *Patient History Protocols.* Several reports outlined the types of information which should routinely be obtained or considered by the attending physician during an examination of a child who was known or suspected to have been physically abused.

6. *Health Team Approach.* All of the general reviews focussing on the issue of child physical abuse advocated that a team approach be adopted in the management of physically abused children. Typically, the composition of the team envisaged included: paediatricians and/or psychiatrists, nurses, social workers and a number of other health workers. Both Segal and Carter reported that by the mid-1970s, a number of hospital-based child abuse teams had been established across Canada.

Noting the different membership of these teams, Segal observed that "the success of a child abuse team rests not so much on its organization as upon the talents of specific individuals."[7] Notably absent from the composition of the recommended child abuse teams which were advocated in these reports was participation by: community child protection workers, the police, Crown attorneys or community volunteers. In a number of hospitals across Canada, child abuse teams had already included representatives from these disciplines or agencies. On the omission of other workers in the membership of these hospital teams, Segal noted that "many members of the medical profession have been unaware of the specialized and other community resources available to them and this may have contributed to ... a tendency to attempt management that could well have been handled by non-medical professionals."[8]

On the basis of the Committee's review, it is evident that significant changes had occurred between the date of publication of these reports and the beginning of this decade when facilities for providing special services for sexually abused children began to be established. Unlike the units from which several of these new programs had evolved, the membership of these teams has been broadened to include a number of other disciplines involved in the protection of children. These changes constituted a gradual shifting away from a "medical model" and the gradual adoption of a philosophy of shared interdisciplinary management of these cases.

The general reviews on child abuse in Canada highlight a number of concerns expressed by senior clinicians which as yet have not been resolved. On the basis of the Committee's review, it is concluded that the classification system for diseases and/or conditions precludes the identification for statistical purposes of many conditions involving child sexual abuse. It is also evident from the Committee's research findings and discussions with physicians that medical opinion is still strongly divided on the matter of the optional or mandatory reporting of known or suspected cases of sexual abuse to the authorities. In the course of its visits to different hospitals across Canada, the Committee found that on occasion there was little knowledge of the work of comparable programs elsewhere in the nation. There was often a better knowledge of special clinical programs in the United States, United Kingdom or France than of the operation of a number of well established Canadian specialty units.

Clinical Research Studies

In its search for Canadian clinical research on child sexual abuse, the Committee undertook a review spanning three decades prior to July, 1983 of indexed inventories of medical research. In addition, the Board of the Canadian Paediatric Society approved the publication of a notice in its *Bulletin* that requested reports of studies on these issues and copies of medical protocols being used in the assessment of sexually abused children. The research studies identified by these means paralleled the shifting sequence in the focus of scholarly attention that was noted in the general clinical reviews for the field. Several of the initial studies focussed on physical child abuse. Towards the end of the 1970s, reports of research on child sexual abuse began to appear in

professional journals. Because of their relevance to the issues being considered by the Committee, some of the principal findings of these clinical studies are presented.

1957-1971 Winnipeg Child Abuse Study

The experience of 132 children who had been physically abused and who had been treated at the Children's Hospital of Winnipeg between 1957 and 1971 was documented in this report, the first of its kind in Canada.[9] The study documented the physical and emotional injuries of these children, 34 of whom were followed up and medically re-examined. Less than half of the group of patients who were reassessed two years following their initial admission to hospital were considered to have developed normally. The remainder were found to be retarded, emotionally disturbed or showed evidence of having suffered brain damage.

This detailed review of physical child abuse provided no separate listing of the children in this group who may have been sexually abused. One child was reported to have had a torn rectum but the cause of this injury was not identified.

Like Kempe's study undertaken in the United States, this baseline Canadian report outlined steps for the improvement of the clinical management of these cases. The researchers recommended that their care be provided by "experienced medical and social work personnel"; that there was a "necessity of letting the medical facts speak for themselves"; and that there should be "follow-up surveillance of these families."[10]

1965-1967 Edmonton Rape Study

Based on referrals from the Edmonton Police Force, 100 sexually assaulted females were medically examined between July, 1965 and January, 1967.[11] Of this number, 38 were girls who were age 15 or younger. The study found that "child molestations are more common in the summer months." The injuries of the patients were not reported separately for children. For all patients, it was reported that five had suffered bruised extremities, four had contusions and 14 had lacerated hymens.

The study did not state how many of the females who had been sexually assaulted had not been physically injured. Based on the findings presented, and assuming that no patient had received multiple injuries, then slightly over three in four females (77 per cent) were reported not to have been physically injured.

1966-1970 Nova Scotia Child Abuse Study

The results of this extensive interdisciplinary study of child abuse are cited elsewhere in the Report.[12] Of the 59 cases of child abuse which were identified over a five year period, one involved a child who had been sexually abused. No specific information was given about this child.

1972-1976 Toronto Child Sexual Abuse Study

On the basis of the cases of child sexual abuse treated at the Hospital for Sick Children from 1972 to 1976, 50 were selected for an indepth analysis involving 99 variables.[13] The principal findings of this extensive report were:

- *Age and Sex*. Of the 50 children, 42 were girls and eight were boys. The average age of the children was 8.1 years.
- *Number of Assaults and Time Taken to Report*. Of the 23 children who had been assaulted once, the average time taken to report the incident was about half a day while for the 27 children who had been victimized more than once, the average time elapsed was over three months.
- *Identity of Suspect*. About one in four (25.5 per cent) suspects was a family member or a relative, 41.8 per cent were friends or acquaintances and 32.7 per cent were strangers.
- *Consent and Coercion*. About one in four (26 per cent) children was reported to have consented to the assault and the same proportion had actively resisted their assailants.
- *Child's Awareness of Act*. Half of the children (52 per cent) were judged to have known the meaning of what had happened to them, 42 per cent were reported not to have been aware that "something bad" was being done to them, and no information on this point was available for the remainder of the children.
- *Physical Injuries*. Only reported physical injuries to the child were recorded in this study. No information was given about the nature of these harms. Based on the information listed in hospital charts, 48 per cent of the children had been injured, an equal proportion had not been hurt, and no information was given for the remainder of the cases. Of the children who had been assaulted by strangers, one in four (27.8 per cent) had been injured, while of those who knew their assailants, half (51.4 per cent) had been physically hurt in some way.
- *Referrals Between Agencies*. Over half of the patients (54 per cent) were known to have been in contact with child protection services before they had attended the hospital. Following their medical assessment and treatment, 11 patients were referred to a child protection service, 27 were medically referred and 10 children had not been referred to other services.

  The report noted: "With respect to the Children's Aid Societies' referrals, again it is astonishing that there were only 11 referrals. It is the policy of the Hospital for Sick Children to "automatically" refer all alleged sexual assault cases to the appropriate Children's Aid Society. The records at the Hospital do not indicate why adherence to this policy is not being maintained".[14]

- *Liaison with Police.* Almost nine in 10 (88 per cent) of the children were brought to the hospital for assessment by the police. No information was given of the proportion of cases in which charges were laid. In 10 instances, the assailants were known to have been prosecuted, and of these, seven were convicted.

- *Laboratory Procedures.* On an average, 2.3 laboratory procedures were ordered on behalf of each patient. The number of these tests varied in relation to whether the suspected offenders were family members (1.7) or strangers (2.3).

1976-1979 Ottawa Child Sexual Abuse Study

Sexually abused patients who were referred to the gynaecological outpatient service of the Children's Hospital of Eastern Ontario (Ottawa) were assessed and treated by a team comprised of a gynaecologist, a nurse and a social worker.[15] Over a period of about two and a half years, 31 sexually abused children were seen at this service.

- *Age.* Of the 31 children, 12 were 12 years or younger and 19 were between 13 and 17 years-old. The sex of the children was not reported.

- *Involvement with Helping Services.* Slightly less than half (45 per cent) of the children had had prior contact with child protection and/or psychiatric services.

- *Social Difficulties.* Prior to attending the clinic, there had been an earlier identification of social difficulties for 47 per cent of the children and 75 per cent of the adolescents.

- *Identity of Suspect.* In 84 per cent of the cases, the identity of the suspect was known (family, 36 per cent; neighbours, 32 per cent; and peers, 16 per cent).

- *Use of Force.* Force was reported to have been used against 8 per cent of the children and 37 per cent of the adolescents.

- *Follow-up of Patients.* About half (47 per cent) of the adolescents, but only 8 per cent of the children were followed up by the clinic for a period of a year or longer.

- *Notification of Authorities.* It was reported that "the police were contacted in the majority of the cases" and "court involvement proceeded with 35 per cent of the population." Referrals to child protection services were not reported.

This report on the experience of sexually abused children did not specify their gender, no information was given on the findings of their medical examinations and no findings were reported on the injuries which they may have sustained as a result of having been sexually assaulted.

1977-Ongoing, Montreal Child Sexual Abuse Study

The most extensive clinical research on child sexual abuse for Canada has been undertaken at the Centre Hospitalier Sainte-Justine.[16] The initial report on this research which was started in 1977 reviewed the experience of 125 sexually abused children. The scope of the study was subsequently extended to include the documentation of the experience of 407 young patients who had been seen by the end of 1981. A component of this research has been the follow-up of 107 children and their families 13 months after the offence had initially been reported to the Hospital.

In 1977, a protocol was developed for taking medical histories from sexually abused patients. At this Centre Hospitalier, most of these patients were seen on an outpatient basis. The findings of the initial study of the experience of 125 children included:

- *Age and Sex*. Most of these patients were females (119 girls, six boys); 56 of the children were age 11 or younger, and 69 were between 12 and 17 years-old.
- *Sexual Acts*. Of the 56 children, 80.4 per cent had had their genitals touched and 10.7 per cent had been a victim of sexual intercourse, while for the 69 adolescents, the proportions for these acts were 31.9 and 44.9 per cent respectively.
- *Identity of Suspect*. The suspect was not known in relation to 39 per cent of the children and 46 per cent of the adolescents. Of the 64 suspects who could be identified, 36 were age 20 or younger.
- *Time Taken to Obtain Medical Assistance*. About seven in 10 of the patients were seen at the hospital within 48 hours after they had been sexually assaulted.
- *Injuries*. Of the 125 patients, only one was reported to have required surgery, and for 50 patients for whom laboratory tests were obtained, positive spermatozoid results were found for 21, three of whom had contracted a sexually transmitted disease.

The preliminary findings of the follow-up study of 107 patients which were reported to the Committee indicated that about half of the teenagers had discontinued seeing their boyfriends and a number had transferred to other schools.[17] About one in four (26 per cent) was still found to be afraid and about one in three (29 per cent) was highly emotional about a year after the assaults had occurred. Most of the children had sought to resume their usual activities, but in this respect, some of them were thwarted by the reactions of their families. About one in five of the parents of these children was still angry (21 per cent) at what had happened or tended to blame the victim (18 per cent). About a third of the parents (30 per cent) refused to discuss the incidents with their children and they reacted as though nothing had happened to them.

In the context of comparable clinical research on child sexual abuse, the longitudinal study undertaken at the Centre Hospitalier Sainte-Justine is unusual with respect to: its size; the amount of the information obtained; the

length of the review carried out over a period of several years; and the follow-up of patients in order to document the long-term effects of sexual assaults against young victims.

1977-1978 Toronto Child Sexual Abuse Study

Drawing on records of the Emergency Department of the Hospital for Sick Children, a total of 843 cases of child sexual abuse was identified for the years 1962, 1967 and 1970-78.[18] An average of about 76.6 cases was reported per annum with the largest number of cases having been seen in 1970 (95), 1971 (97) and 1978 (96). A more detailed review was undertaken of 175 hospital charts for 1977-78, for which sufficient information was obtained for 164 cases. The 1972-76 study of child sexual abuse undertaken in this hospital was not referred to in this review. Consequently, there was no comparison of the results of the two inquiries based in the same hospital.

- *Age and Sex.* Of the sexually abused patients who were seen between 1977-78, 89.4 per cent were girls and 10.6 per cent were boys. The average age of the children was 9.8 years.
- *Identity of Suspects.* In two of three cases, the children knew their assailants (close relatives, 27.6 per cent; friends, acquaintances, 38.5 per cent).
- *Mentally Retarded Victims.* Seven of the children (4.0 per cent) "were diagnosed previously as mentally retarded . . . with a mean age of 14.3 years. All, but one, were girls. The assailant was unknown in three cases, an acquaintance in three other cases and a relative in one case."[19]
- *Physical Injuries.* The 1972-1976 study undertaken in the Hospital for Sick Children reported that 48 per cent of the sexually assaulted children had been physically injured. In contrast, the 1977-78 study at this hospital concluded that "physical injury is involved in a relatively small proportion of alleged sexual assault cases seen by physicians . . . in our study, the incidence was 14 of 174, or 8 per cent."[20] No listing of the nature of these injuries was given.
- *Previous Contact with Hospital.* Of the 114 children who had been sexually assaulted by persons whom they knew, about half (52.6 per cent) had previously been treated at the hospital for unrelated conditions. However, in one in seven of these cases, information in the patient's charts indicated that medical personnel had previously suspected that a child had been sexually abused.
- *Referral to Child Protection Service.* Of the 164 children for whom this information was noted, referrals were made to child protection services in about one in four cases (28.0 per cent). The proportion of such referrals was: incest (57.4 per cent); patients who knew their assailants (17.9 per cent); and children who did not know their assailants (14.0 per cent).
- *Notification of Police.* Of the charts in which this information was noted, the police had been notified in about four in five cases (78.6 per cent). Charges were laid in about a third (36.9 per cent) of the cases in which the assailants were known and in one in nine cases (11.1 per cent) in which strangers had sexually assaulted a child.

1980 St. John's Child Abuse Study

The Child Protection Team of the Janeway Child Health Centre (St. John's) was initially established in 1974 to review cases of suspected abuse admitted to the hospital. The work of this team, which was comprised of two physicians, the Director of Ambulatory Services, a social worker and a representative of the provincial Department of Social Services, was subsequently extended to include external referrals. A review was undertaken of 78 child abuse victims seen by the team during six months in 1980.[21]

"The team dealt with six cases of sexual abuse—four were girls and two were brothers. Five of the six were over ten years of age and the sixth was eight years-old, and thus were able to tell someone that they were being abused."[22] No separate analysis was given of these six patients. The report noted that while "all but one child had a complete physical examination," "when information in the chart concerning the injury was reviewed, it was found, in most cases, to be poorly documented. Such documentation should contain sufficient information to indicate if abuse was considered, and if it was ruled out by the attending physicians . . . the chart is not useful as a document in court to support a charge of child neglect, unless it is complete."[23]

Of the physically abused children who were seen at this hospital during six months, "in 56 of the cases, recommendations were made, but these were reviewed at a subsequent meeting for only 37 cases."[24]

Clinical Research on Injured Sexually Abused Children

The review of Canadian clinical research reporting findings on child abuse between 1957 and 1980 shows that towards the end of the 1970s, there was a growing medical concern about the documentation of child sexual abuse. What is common to these medical reports, with the exception of the 1966-70 Nova Scotia study, is that the research focussed on the experience of small groups of patients examined and treated at hospitals. In this respect, these findings cannot be generalized to encompass the experience of all medically examined young victims of sexual assaults. The findings of the National Population Survey indicate that when sexually assaulted children seek medical attention, a substantial proportion of this care is provided by family doctors in community practice.

The central focus in these reports was to provide a social description of the sexually abused child. Less attention was paid to reporting: the findings of the medical histories of these patients; the results of the procedures undertaken; the clinical management of the children; and a listing of their physical and emotional injuries. Accordingly, the presentation of findings in these reports precludes: a consideration of the effects of the sexual assaults on very young children; an analysis by the sex of the victims of these experiences; and a relevant review of the legal implications of the findings. None of the reports, for

instance, provided a detailed listing by the age and sex of the children in relation to: the acts committed; how the children were injured and the medical procedures undertaken. The classification of the types of sexual acts committed and the type of association between the victims and suspected offenders was typically listed in general, and non-replicable, terms. The definition of incest, for instance, was variously broadened to include all types of sexual acts committed; these acts were listed in relation to broad and vaguely defined groupings of family members and relatives. As a result, it is not possible drawing on the findings of these reports to determine how many incest cases were examined, who the suspected offenders were and the specific nature of the harms the victims may have experienced.

Like the research on the extent of sexual offences occurring in the population undertaken by non-medical disciplines (see Chapter 4), this body of clinical research on child sexual abuse is professionally insular. None of these reports cited any of the available Canadian social surveys on the occurrence of sexual offences. There was also virtually no cross-referencing between the results obtained in these studies and those reported in other Canadian clinical studies dealing with these problems.

In reviewing this research, the Committee sought to learn what was known with respect to: the medical assessment of injuries sustained by sexually abused children; the clinical assessment of the short and long-term consequences for the child of these assaults; and the procedures undertaken in the assessment and treatment of sexually abused patients.

The review of the main published reports on physical and sexual child abuse for Canada identified 426 medically examined children who had been sexually assaulted (Table 30.1). In five of the clinical research reports, primarily those focussing on physical child abuse, either no information was given separately about cases of child sexual abuse or the findings were aggregated for the victims of all categories of child abuse (battered child syndrome, physical and emotional abuse, maltreated child, neglect and sexual abuse). In the three remaining clinical research reports, findings were given for 349 sexually abused children, of whom 42 (12.0 per cent) were diagnosed as having been physically injured.

In two of the three research reports in which findings were reported on the physical injuries sustained by sexually abused children, no description was given of these injuries which may have ranged from minor scratches and bruises to more serious conditions. The Committee learned from the researchers who had conducted one of these studies that the reason why more specific information on physical injuries had not been reported was that this information was found to have been incompletely listed in the patients' hospital charts. **A detailed listing of the injuries sustained by sexually abused children was given in only one report which gave details of injuries for four young patients. In relation to published medical reports dealing with injuries sustained by sexually assaulted children and youths, these sources do not comprise a sufficient**

Table 30.1

Physical Injuries of Sexually Abused Children Reported in Canadian Clinical Medical Research Studies

Research Report	Group Studied	Number of Sexually Abused Children (n = 426)	Physical Injuries Associated with Sexual Assault[1]
Winnipeg (1957-1971)	physically abused children (132)	1	possible indication of sexual assault for one child, but not so identified
Edmonton (1965-1967)	rape victims (100)	38	no separate analysis for experience of 23 children
Nova Scotia (1966-1970)	physically abused children (59)	1	no injuries reported
Toronto (1972-1976)	child sexual abuse (50)	50	no findings given of types of injuries to 24 children
Ottawa (1976-1979)	child sexual abuse (31)	31	no findings reported
Montreal (1977-ongoing)	child sexual abuse (125)	125	specific types of injuries listed for 4 children
Toronto (1977-1978)	child sexual abuse (174)	174	no findings given of types of injuries to 14 children
St. John's (1980)	abused/neglected children (78)	6	no separate analysis given for 6 patients

[1] Findings on Injuries:

(1) Total suspected, indicated cases	66
(2) Total confirmed cases	42
(3) Total confirmed cases providing information on specific injuries	4

basis upon which to assess the nature and extent of the physical and emotional harms experienced by these young victims.

The findings of clinical medical research reports on child sexual abuse suggest that, of the young patients who had been medically examined, seven in eight had not been physically injured. To the extent that this observation is valid, it is apparent that the provision relating to inflicting bodily harm specified in two of the forms of the sexual assault offence introduced by the 1983

amendments to the *Criminal Code* would have been inapplicable in most of these cases as a legal basis for the prosecution of suspected assailants. While one in eight of the clinically assessed victims of sexual assault was reported to have been injured, even this information was incomplete. For the majority of these cases, no information was given specifying in detail the nature of these physical injuries.

In only two of the research reports, those undertaken at the Centre Hospitalier Saint-Justine and the 1972-76 study at the Hospital for Sick Children, were results given about the length of time that elapsed between the sexual assault of a child and the provision of medical care. The findings of these studies suggest, but do not confirm, that the length of the interval taken to seek medical attention may have affected whether there was a clinical identification of injuries associated with sexual assaults. The inference which can be drawn from these studies is that the longer this interval is, the greater likelihood there is that the minor injuries incurred (e.g., scratches, bruises or inflamed genitalia) may have healed before the examination occurred. Therefore, where long delays occur in seeking medical care, a record of such injuries either may be unknown or omitted from the results of the medical examinations of these young patients. These trends are only partially documented in the clinical research reports. In no instance were the results of the examinations considered in relation to the types of sexual acts committed against children.

The results of the clinical research reports contain little information about how many of these sexually assaulted young patients were routinely examined in relation to whether they may have contracted a sexually transmitted disease. In the absence of sufficient statistical documentation of the clinical findings for children who have been subjected to unwanted intercourse, it has on occasion been assumed that the risk of their contracting a venereal disease either does not occur or is minimal. With the exception of one clinical research report, this body of research does not address this issue.

None of the published medical research reports considered in this review provided an assessment of the emotional and behavioural harms experienced by these sexually abused patients. An anomaly which emerges in the clinical research on child sexual abuse is that, while the most extensive documentation of how children may have been harmed is reported in the studies on incest, the documentation of injuries in these sources is given in relation to emotional and behavioural consequences. No findings are given in the research studies on incest about how children may hae been physically injured. The prevalent assumption in the reports on incest is that young incest victims are seldom, if ever, physically injured. This assumption appears to have been reached without benefit of confirmation in the form of the published results of physical examinations undertaken by physicians.

The Committee acknowledges that the clinical research studies contain relevant information about certain dimensions of child sexual abuse. These sources, however, provide insufficient documentation upon which valid conclusions can be reached about: how many sexually assaulted children are treated

by physicians; the usual types of clinical services provided for them; how they may have been injured; or the types of medical and social services required to provide these patients with more effective protection.

Hospital Child Sexual Abuse Programs

Clinical programs for physical child abuse were initially started at a small number of Canadian hospitals during the 1960s. By the end of the 1970s, it was estimated that about two dozen hospitals across the country had established similar units. The commonly-held objectives of these programs were: to foster the earlier identification of these problems; to develop services requisite for their assessment and treatment; and to establish a multidisciplinary approach for the care and follow-up of these young patients. At several hospitals across Canada, an informal liaison initially evolved between hospital staff and members of community agencies. As the number of physically abused children who were identified grew, these informal arrangements were gradually replaced by the appointment of co-ordinating committees and the designation of special clinical teams.

Most of these special hospital programs were initially designed to serve the needs of all types of abused and neglected children. This approach to the organization of clinical services is still followed in many hospitals. In all of the initially established programs, child sexual abuse was recognized as an important problem, but one that, because of the small number of cases seen, did not warrant the separate development of special services or units. This situation changed first in a number of major tertiary hospitals which, in response to a heavier caseload of sexually abused children, began to develop guidelines and examination protocols for the management and treatment of these patients. By the end of the 1970s, several hospitals across Canada had established special clinical programs along these lines.

Information on the objectives and services provided by hospital programs for child sexual abuse is typically found in institutional reports prepared for hospital administration or medical advisory committees. The examples of the special programs established at a number of Canadian hospitals reported here do not constitute a representative cross-section of all such services. The programs listed, however, illustrate the breadth and diversity of the steps which have been taken.

Dr. Charles A. Janeway Child Health Centre (St. John's)

This hospital's Child Protection Team is comprised of: a chairman who is a paediatrician; the Directors of Ambulatory Services and Social Work; a representative of the provincial Department of Social Services; and on an *ad hoc* basis, other professionals from the hospital or community agencies who are invited to provide consultation on specific cases.

At its weekly meetings, the Janeway Child Protection Team may perform the following functions:

1. Review the paediatric assessments of suspected child abuse victims.
2. Review the social work assessments of these patients.
3. Consider the need to report suspected or confirmed cases of child abuse to the provincial Director of Child Welfare.
4. Prepare recommendations for cases for which referrals may be made concerning the management and subsequent treatment of these patients.
5. Review the clinical findings that may serve as the basis for providing expert testimony to courts and reports made to the Department of Social Services.
6. Serve as a focal point for the training of staff concerning child abuse.
7. Provide the focal point for the ongoing monitoring of the treatment of selected cases.

The Team is reported to act as an advocate for the development of resources required in relation to services for abused children.

Centre Hospitalier Sainte-Justine (Montreal)

The membership of this hospital's multidisciplinary Sexual Abuse Team includes representatives of a half dozen departments in the hospital (e.g., paediatrics, gynaecology, microbiology, etc.). The hospital has designated two of its social workers to handle all sexual abuse-related cases.

Most of the victims seen by the Team are brought to the Emergency Room—usually by the police. As the reputation of the service has become more widely known, the number of referrals from other departments in the hospital and of self-referred patients has increased.

Upon arrival at the hospital, the patient is seen by a paediatrician and, if necessary, by a gynaecologist (the latter is routinely called upon to attend most victims between ages 12 and 18, but to fewer prepubescent children). In the Emergency Room, a chart is completed for each patient. In addition, a basic information sheet on the offence is completed as well as a special government accident form for Le Comité de la protection de la jeunesse. The charts and basic information sheets are forwarded to the hospital's Child Protection Clinic, while those of the 12 to 18 year-olds are sent to the Adolescent Clinic of the Department of Paediatrics. Following intake, all cases are reviewed at intervals of two weeks and three months.

Montreal Children's Hospital

One of the activities undertaken by Quebec's Le Comité de la protection de la jeunesse has been to seek to improve the co-ordination between professionals in Quebec hospitals in dealing with physical and sexual abuse cases. A program of this sort had been initially developed for child abuse in 1962 at the Montreal Children's Hospital, operating out of the Emergency Room. A child arriving at this unit, who presents signs of being sexually abused, will first be seen by a nurse who notes the child's appearance and stated reasons for being brought to the hospital. Next, the child is taken to a private cubicle and examined by a resident or intern (where possible, of the same sex as the child), who follows the procedures outlined on a "sexual assault protocol" prepared by the hospital.

A social worker is on call for consultation at the Emergency Room. If a child suspected to have suffered abuse is brought to this unit during the day, the social worker will be called to assess the child's situation. Where the child is brought in at night or on a weekend, the medical staff attending the child will use their best judgment in deciding whether to call the social worker immediately or to arrange for an appointment the next day. However, when an immediate "social management" decision must be made (e.g., whether to make a social admission of the child as an inpatient), the social worker will be paged. Where the suspected abuser is the child's father, or another person living with the child, the social worker may be called in to recommend a "social" admission. If this happens, the child remains an inpatient until the family situation is assessed and measures are taken to assure the child's security.

If the child is treated as an outpatient and released, an appointment for a follow-up in the hospital's gynaecology clinic will be arranged, and the child's case will also be referred to an accessible community-based social agency. The case is likely to be referred to an outside agency if it is judged that the child does not require the services of other disciplines available at the hospital.

The hospital maintains a multidisciplinary Child Protection Committee. The Committee receives and keeps records of abuse cases, and confers on the handling of especially difficult or problematic cases, such as those involving incest or high risk of abuse. Professionals from outside the hospital may be invited to participate in the Committee's conferences.

Children's Hospital of Eastern Ontario (Ottawa)

The child protection program of this hospital, established in 1974, operates at two levels. The Executive Committee is concerned with the development of policies in relation to child abuse. The membership of this group consists of: the Head of Emergency Services, the Head of Ambulatory Care, the Senior Hospital Social Worker, the Head Nurse of Emergency Services, a paediatrician, a psychiatrist, a surgeon, the Vice-President of Professional Services, the

Co-ordinator of Child Abuse Programs and the Supervisor of the Services Division from the local Children's Aid Society, the Director of the Ottawa-Carleton Regional Health Unit and a Community Volunteer. Responsibility for consultation on specific cases is assigned by the Executive to the Child Protection Team, whose membership represents emergency care, nursing, social work, psychiatry and paediatrics.

Until October, 1981, the membership of the Team also included a case worker from the local children's aid society and a public health nurse. At the time, in response to guidelines on the reporting of child abuse cases prepared by the Ontario College of Physicians and Surgeons, the Ontario Medical Association, the Ontario Ministry of Health and the Ontario Ministry of Community and Social Services, these external members were dropped from the child abuse Team. This guideline stipulated that:

> The physician should be particularly careful not to discuss the details of the case with anyone except where normal professional consultation with colleagues is needed. This may include discussion within a hospital-based child abuse committee comprising members of the hospital staff and which may include paramedical members, so long as it does not have members representing agencies outside the hospital. The requirements of confidentiality about the deliberations of such a committee are subject to the *Public Hospitals Act*. Specifically, in cases which have become public knowledge, he should be extremely wary of any discussion with persistent members of the news media, or concerned members of the public, politicians, etc.[25]

The members of the Team meet weekly; its work includes:

1. Confirmation of diagnoses of child abuse.
2. Reporting abuse cases to the local children's aid society.
3. Co-ordination of in-hospital resources for the effective short-term management of cases.
4. Co-ordination of the professionals involved in the management of cases to assure that external agencies receive relevant information.
5. Recommendation of long-term treatment options.
6. Review and follow-up of previously admitted cases.

The members of the Committee provide in-service, child abuse-related educational programs for hospital staff. Activities in public education include: media appearances; and lectures to medical and nursing students and to community groups.

The Committee has developed procedures intended to facilitate the clinical identification of child abuse cases. One of these measures is a specialized protocol to be used in the emergency room as a procedural guideline for the management of child sexual abuse cases.

The Committee's Alert System was designed to permit the early discovery of child abuse cases. The system employs a screening questionnaire—the Home

Accident Injury Survey—which must be filled out by the nursing staff or medical personnel, for every case ostensibly involving any accident in the home. The screening of these forms is undertaken by the Emergency Social Worker in consultation with the Head of Emergency Room Services.

Where the responses to the questionnaire raise concerns or suspicions, a preliminary assessment is carried out. A code based on the use of different coloured decals has been developed; black decals are affixed to the medical charts of patients against whom it has been confirmed that sexual or physical abuse has been committed. Blue decals denote cases in which there is judged to be a high risk of abuse or neglect. The code is used as an instantaneous means of alerting medical staff to the nature of the cases that they are handling.

Finally, a card file has been developed in which are recorded the names of all children whose cases have been discussed during Child Protection Committee meetings. The Alert System was designed as a means of promoting the early—and where possible, the immediate—identification of abuse cases, in order to eliminate unnecessary delays in intervention.

Hospital for Sick Children (Toronto)

Established as part of the Child Abuse and Neglect Program set up in 1973 at the Hospital for Sick Children, the Sexual Abuse Team consists of: a paediatrician, a psychiatrist, a social worker, an emergency room nurse, a public health nurse and a secretary. The social worker is a hospital employee, assigned to the Team on a full-time basis. The Team's responsibilities include the following duties:

1. The identification of sexual abuse cases presented at the hospital.
2. The medical treatment of such cases.
3. Providing a place of safety by means of victim hospitalization (only occasionally required).
4. Public and professional education.
5. The collection of statistics on all cases.
6. The provision of support and consultation to other facilities and agencies; this may involve accepting referrals from other medical centres and hospitals.
7. Resource development (on a limited scale).
8. The collection of evidence in case of trial and provision of expert testimony.

The Team acts as a central co-ordinating agency for marshalling resources to treat child sexual abuse cases. Fulfilling this function led to the development of liaisons between the Team and the Children's Aid Society and the Metropolitan Toronto Police Department. Involvement with law enforcement may include the referral to the Team of victims identified through police investiga-

tions. Also, in cases in which it is felt that the police may be reluctant to press charges against an offender, and the Team considers prosecution necessary for the victim's protection, police representatives may be invited to attend case conferences.

In the management of cases of child sexual abuse, the Team conducts a physical examination of the child and prescribes whatever form of medical treatment is indicated. The preference is to de-emphasize the use of the hospital Emergency Room as a site for conducting initial examination and assessment procedures; since many of the cases which come to light involve sexual abuse that has been ongoing for an extended period of time, they do not qualify, strictly speaking, as emergency situations (i.e., as suddenly arising crises requiring instant treatment in order to guarantee the patient's medical safety).

It is felt that bringing a child into an emergency room immediately after the sexual abuse is discovered—perhaps in the middle of the night—constitutes an overly emotional reaction which may be psychologically injurious to the child without providing significant medical benefit.

The Team encourages community case workers who learn or suspect that a child has been sexually abused to arrange for an appointment to have the child receive a medical examination as soon thereafter as possible. The examination usually is conducted within a day of contact having been made.

The Sexual Abuse Team manages the medical and psychosocial aspects of each case. Physical examinations are conducted; medical problems arising from sexual abuse are identified; and the most appropriate forms of treatment are assessed and arranged. The Team's social worker and psychiatrist often function in tandem, with the psychiatrist treating the offender, and the social worker providing therapy to the victim and her mother, either separately or together (although this pattern of treatment may vary from case to case). Where possible, an attempt is made to involve the victim's siblings in the therapy process.

The Team advocates the development of policies like those of the Children's Hospital of Winnipeg—that is, a greater and more consistent use of the courts and the criminal justice process to induce offenders to seek treatment and to protect the child by effecting the offender's removal from the home. The Team favours court-ordered treatment, as opposed to imprisonment, and further believes that the offender's bail should be made conditional on his agreement to stay away from the family.

The Sexual Abuse Team provides evidence for use in the trial of persons charged with sexual abuse-related offences. The evidence falls into two categories. First, there is the physical proof of abuse, in the form of specimens and clothes collected at the time of the victim's medical examination. Second, the Team members are called upon to give expert testimony concerning victims and/or alleged offenders with whom they have had contact.

Children's Hospital of Winnipeg

In conjunction with the clinical research on physical child abuse undertaken at this hospital, hospital-based paediatricians and representatives of local children's aid societies began meeting in 1968 on a regular basis to review the diagnoses and management of physically abused children. These informal arrangements continued until the mid-1970s, when more structured procedures evolved that included consultation between hospital staff, the police, local child protection services and the provincial Department of the Attorney General. At this time, representatives from each of these programs began to meet on a regular basis to review cases of suspected child abuse. In a review of the development of this program prepared for the Committee, it was noted that:

> The regular participation of the Police in cases of child abuse was reluctantly received by the medical and social work contingent and, only through the case-by-case involvement and time, did the group's members begin to understand, accept and respect the other's professional biases and value the various approaches required in the management of child abuse."

The special program at the Children's Hospital provides for the assessment and treatment of victims, offenders, and where indicated, members of the victim's family. In the physical examination of these patients, the physician's role is:

1. To document the history given by the victim by medical evidence, where possible.

2. To obtain forensic evidence for possible legal proceedings.

3. To treat the acute problems of physical trauma, sexually transmitted disease and the risk of pregnancy.

4. To follow-up the patient for psychological effects of trauma, pregnancy, sexually transmitted disease and assess with respect to the need for referrals for long-term therapy. This may require:

(a) initial examination with full forensic examination on the day of the victim's reporting of the assault;

(b) a booked appointment for assessment; i.e., in a "cold" incest situation;

(c) several assessment visits, i.e., if a traumatized child requires time to develop trust before she can allow the intrusion of a pelvic examination;

(d) immediate examination under anesthesia, i.e., where there are perineal and/or vaginal lacerations; and

(e) at least one follow-up visit for follow-up cultures and VDRL and psychological re-assessment.

In addition to the physical examination, the hospital offers treatment for non-offending parents as well as for victims and abusers. The treatment given is usually in the form of group therapy or self-help and places strong emphasis on assertiveness training. Where the victim and the other members of her family wish it, the goals of treatment may include re-uniting the offender with

the family; however, no pressure is placed on the family to adopt this goal, and typically, the process of reunification is a gradual and protracted one.

The treatment of some families has continued from the program's inception; the length of the treatment in these cases is seen as a means of addressing any residual problems in the family and of monitoring for any sign of recurrent abuse. The philosophy in providing this treatment is that every professional worker who comes in contact with the victim must communicate to the child that his or her story is believed, that he or she has done nothing wrong and that he or she is in no way to blame for the offender's actions.

A detailed set of procedures has been developed with respect to the management of offenders. An initial psychological assessment of the abusing parent may be ordered (and usually is carried out by a private practitioner) to determine whether the accused's problem is psychological or behavioural. Decisions concerning the action to be taken are made by the Sexual Abuse Sub-Committee at its twice monthly meetings.

The primary avenue of treatment where prosecution is stayed, is the unit operating in the Children's Hospital. Any failure by the abusive parent to attend treatment sessions, or to make a serious effort at correcting his behavioural problems, is reported in writing by the hospital's staff to the Crown Attorney; such lapses may trigger a resumption of prosecution. It is intended that the offender be given a tangible incentive to work earnestly at rehabilitating himself.

Where an abusive parent has been charged with an offence more serious than indecent assault (e.g., where he has had sexual intercourse with the victim), every effort is made to persuade the accused to plead "guilty", and then to offer him treatment at the Children's Hospital. Such treatment will continue until the trial date. If the personnel providing the treatment feel that the accused's treatment will be cut short prematurely by an early trial date, they will so advise the Crown Attorney who then may move for a postponement.

The example set by the Winnipeg program in developing wide-ranging multidisciplinary co-operation in dealing with child abuse has been influential throughout the province. For instance, a small experimental child abuse unit has been established at the Churchill Health Centre. The objective in setting up this facility was to assess the extent to which a specialized treatment unit (like that operated at the Children's Hospital of Winnipeg) could be effective in making its services accessible to smaller, outlying or isolated rural communities.

Alberta Children's Hospital (Calgary)

This program, established in 1975, is operated jointly by the Children's Hospital and the Ambulatory Care Centre of Foothills Hospital. The multidis-

ciplinary members of this program are responsible for the assessment, treatment and follow-up of cases characterized by: suspected or known non-accidental physical injury; the non-medical failure to thrive or lack of banding; and patients deemed to be at high risk of being physically injured.

The evaluation procedures followed by this program include: paediatric examination; social work assessment; co-ordination of past medical and social data; psychological testing; psychiatric and nursing assessments; and evaluation of parental skills.

The program's policy is to admit all suspected abuse victims for short-term hospitalization in order to permit diagnoses and the formulation of appropriate treatment plans. The treatment plans are developed at dispositional conferences involving members of an 18 member advisory committee. Treatment may entail: parent education groups designed to inculcate appropriate expectations and attitudes and to develop parental skills; psychotherapy; family therapy; marital counselling; play therapy; outpatient treatment for psychiatric disorders; and crisis intervention.

The program emphasizes the co-ordination of resources and several appropriate agencies may be contacted to assist in handling a given case. The program also stresses follow-up through the development and deployment of such complementary resources, such as: crisis nurseries; the use of lay therapists; and education programs for professional groups and the public.

Vancouver Medical Clinic

Established as a pilot project to deal exclusively with child sexual abuse cases, the medical clinic established in Vancouver by the British Columbia Ministry of Human Resources represents an unusual community-oriented approach to these problems. The clinic, in operation since 1981, was designed: to develop procedures and protocols for the medical examination of sexually abused children; to perform such examinations; to supply medical and legal reports and expert court testimony; and to conduct programs of professional education aimed at improving the level of care provided in cases of child sexual abuse by attending physicians and hospital personnel.

While referrals to the clinic were made from a number of sources, most of the children were referred directly by social workers or the local offices of the Ministry of Human Resources. The clinic helped to promote the establishment of a Sexual Assault Emergency Centre which began its work at the Shaughnessy Hospital in 1982.

The Centre was staffed by 11 physicians, and by means of assignments based on a rotating roster, a physician was on call at all times of the day. The Centre's services were geared to provide emergency medical services for victims who were age 14 and older.

Younger sexually abused children who required emergency care received services either at the Vancouver Children's Hospital or from physicians on the medical staff of the Centre. The two hospitals are located on the same general site with their emergency rooms being separated by a corridor, an arrangement that facilitates the channelling of patients to the appropriate treatment resource. The Child Abuse Team established at the Children's Hospital in 1975 draws upon an interdisciplinary membership. Its caseload was initially comprised mostly of physical child abuse cases, but in recent years, the proportion of sexually abused children treated at this facility has risen steadily.

What is unusual about the medical programs for child sexual abuse in Vancouver is: the combination of community and hospital-based approaches; the co-ordination of services between different facilities; the availability of especially trained staff on a 24 hour coverage basis; and the development of clinical programs designed specifically to meet the needs of these young patients.

Emerging Trends in Hospital-based Programs

The case studies of hospital-based clinical programs providing services for sexually abused children document that a number of different practices have evolved in relation to the treatment and management of these patients. These approaches include:

General vs. Specialized Clinical Teams

In some hospitals, all types of child abuse are managed by co-ordinating committees or clinical teams. In other centres, specialization has evolved in the form of designated units or special teams which are assigned responsibility for the management of child sexual abuse.

Professional Experience

In some hospitals, the decision has been made to assign only those staff members who have had special training or experience with these problems to the management of child sexual abuse cases. Elsewhere, hospital staff at both the intake and treatment stages may be assigned according to their availability, or on a rotating basis regardless of their prior experience with these problems. As noted in the following chapter, the Committee believes that these workers require special training to work with these children and that funding should be provided for this purpose.

Composition of Teams

The membership of the child abuse/child sexual abuse teams varies widely in terms of: the representation of different disciplines working in hospitals (e.g., paediatrics, nursing, gynaecology, psychiatry, family medicine, clinical psychology, social work, child life specialists); the co-operation with community child protection services, which ranges from full participation to complete exclusion; and the participation or non-participation of the police, Crown Attorneys and lay persons from the community. There is also much variation with respect to whether all members of a committee or team meet regularly, or whether some members are called upon only in relation to particular cases.

Provision of Treatment Services

The range of clinical and social services provided by these hospitals varies according to: the types of examinations that may or may not be routinely undertaken with respect to certain types of child sexual abuse; the scope of services provided by social workers; and whether services are provided exclusively for sexually abused children, or are also provided for members of their families and suspected assailants.

Guidelines and Examination Protocols

Most of the hospitals listed in the case studies had developed guidelines and protocols for the examination of sexually abused children. In some instances, these protocols had been developed for the medical examination of all types of physical child abuse. The contents of the examination protocols vary widely in relation to the identification or non-identification of particular items specified as part of the routine medical examination undertaken for suspected cases of child sexual abuse (e.g., testing for sexually transmitted diseases and how evidence is collected for forensic purposes).

In the course of implementing its National Hospital Survey, the Committee obtained copies of the medical history protocols used at a larger number of hospitals than the number of case studies which have been described. As was the case for the protocols used in the hospitals whose programs have been listed, there was no uniformity in the child abuse protocols of these other hospitals in the classification of items as these related to the identification and examination of child sexual abuse. It was also apparent from the Committee's review that a considerable number of hospitals had no designated procedures in this regard, with these decisions being left to the discretion of attending physicians. This situation contrasts sharply with the procedures adopted in a few major medical centres, in which detailed protocols have been developed with respect to patient management procedures, referral practices and examinations.

Patient Referral Procedures

Children who are sexually abused may come to the attention of a number of different hospital units, such as: the emergency room; child protection and adolescent medicine departments; and special services involving, among others, gynaecology, paediatrics, psychiatry, general medicine, family medicine, social services and clinical psychology.

In some hospitals, special procedures have been devised to facilitate the reporting and referral of child sexual abuse cases between these different units and to special programs, where these have been established. Arrangements of this kind are not standard operating procedures in all hospitals and, where this is the case, it is unknown how many sexually abused children who are treated elsewhere in a hospital are not reported to a hospital's special program. The Committee learned of instances in several hospitals in which other hospital services, in spite of adopted hospital policies requiring consultation, chose to retain the clinical management of these patients without involvement of the abuse team.

Outpatient Treatment and Admission to Hospital

Unless sexually abused children had been seriously injured, the unusual case which would invariably be admitted to a hospital, the usual practice was to treat sexually abused children on an ambulatory or outpatient basis. In some instances, exceptions to this practice were made with respect to sexually abused children who, while they may not have been physically injured, were admitted to hospital on "social" grounds as a means of affording them immediate protection.

Summary

The hospital case studies of special clinical programs for child sexual abuse show that there has been strong leadership taken in mounting comprehensive services for these children in some hospitals across Canada. When the elements of the different programs are considered together, they constitute a broad range of protective care services from the initial identification of cases through to their long-term follow-up. Few of the hospital programs providing special services for sexually abused children incorporate the full range of activities listed in the case studies. In the absence of documentation, the efficacy of particular measures in improving the care and protection of these patients is unknown. It is also unknown whether hospital-based special programs designed to serve these patients are a more effective means of managing their needs than the medical care provided to sexually abused children attended by physicians in community practice. The Committee believes that more complete information than is now available about how the medical care

of sexually abused children is provided should be obtained, and that on the basis of such a review, consideration be given to how the work of these programs might be strengthened. The findings of the National Hospital Survey presented in Chapter 31 indicate that such a review is warranted.

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Chapter 30: Research and Treatment Programs

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Chapter 31

Injuries Sustained

The National Hospital Survey was undertaken to provide documentation of the nature of the physical injuries and emotional harms sustained by sexually assaulted children and youths, the medical examination and treatment of these conditions, and to give an assessment, if feasible, of the long-term consequences for the young victims. On the basis of the National Population Survey, the Committee learned that only a small proportion of persons who as children had been sexually assaulted stated that either they had been injured or had obtained medical attention. The survey's findings also showed that when medical care had been sought, about half of the persons had turned to physicians in community practice and the other half had obtained care at hospitals. It is the experience of the latter group for which research findings are given in this chapter.

In its review of previously completed clinical research, the Committee had found that there was insufficient information available about the medical procedures typically followed in cases of this kind and that the documentation of the nature of the injuries and harms sustained by victims was incomplete. The results of the other national surveys — population, police forces, child protection services — showed that only a small proportion of victims was known to have been injured. In none of the other national surveys, however, was precise and detailed information available in relation to the medical examination, treatment and followup of sexually abused children.

Design of the Survey

In designing the research protocol to collect information in relation to the clinical assessment and treatment of sexually assaulted children, the Committee drew upon: its Terms of Reference; the issues and research findings identified in the available Canadian clinical research on child sexual abuse; the history-taking and medical examination protocols used in a number of hospitals across the country; the results of a small pretest; and an assessment of the revised protocol provided by an expert medical advisory committee.

The Committee's Terms of Reference either directly specified or subsumed a number of medical, social and legal issues for which specific questions were developed in the hospital research protocol. These items included, for instance, documenting the medical procedures undertaken, the results of examinations, an assessment of the injuries incurred, and legal questions pertaining, among others, to the age, sex and types of association between patients and their assailants, the interval between an incident and when medical care had been received, and whether cases of confirmed child sexual abuse had been reported to external services (e.g., child protection services, the police).

On the basis of these preparatory steps, a draft research protocol was pretested at three hospitals. These hospitals were: The Hospital for Sick Children (Toronto) — 19 children; the North York General Hospital (Toronto) — two children; and the Children's Hospital of Winnipeg (Winnipeg) — eight children. Seven of the 29 cases had involved incest and in four instances, some form of incestuous behaviour was reported to have occurred (i.e., sexual acts other than intercourse). There were 11 other types of sexual acts committed against children; in seven cases, insufficient information was available to determine what acts had been committed or the type of association between victims and suspected assailants.

The pilot testing of the draft protocol indicated that in the absence of certain types of essential information in some hospital charts, it would be necessary, where feasible, to obtain the findings directly from physicians and other health personnel who had cared for these children. This procedure was adopted when the survey was subsequently implemented. The pretest also sharpened the identification of the denominator to be used in relation to which types of cases should be included or excluded in the survey. It was learned, for instance, that while some hospital child sexual abuse teams had reviewed cases, some of them had not been medically assessed or admitted to an outpatient service. In one hospital, a quarter of the cases reviewed by the hospital team fell into one or other of these categories.

The appointment records for patients' visits proved to be an inappropriate means upon which to base the selection of cases for inclusion in the survey. In a number of instances, it was found that appointments had not been kept or that a family member other than the sexually abused child had visited the hospital to obtain advice or counselling. On the basis of these considerations, the cases of child sexual care included in the final survey were limited to those known to a hospital team and for whom a medical assessment had been provided. Excluded were those children whose condition had not been identified by the attending staff and those instances where personnel may have known that child sexual abuse had occurred but had not reported these cases to the hospital's child abuse and/or child sexual abuse teams.

The revised research protocol was reviewed by an Expert Medical Advisory Committee convened by the Committee. Based on this assessment, the final format of the research protocol was prepared and in co-operation with 11 major tertiary hospitals across Canada, the survey was undertaken which

included all reported cases of child sexual abuse that had been medically assessed and for whom treatment had been provided (for which information could be obtained) between January 1, 1981 and June 30, 1982.

In its contacts with several other hospitals across Canada, the Committee learned that it was believed that few sexually abused children had been examined or treated, that it was deemed to be too difficult to identify these conditions, and that insufficient information was available about cases of this kind. Thus, it was on the basis of these considerations that the Committee sought and received the co-operation of several major hospitals known to have specialized in the examination and treatment of sexually abused children. After the hospital survey started, several other hospitals offered to participate; due to constraints of time and assigned resources, their inclusion in the survey was not feasible.

The hospitals participating in the survey were located in eight provinces. In most instances, they were major tertiary institutions providing specialized services for regions within and beyond provincial boundaries. The hospitals were:

- Dr. Charles A. Janeway Child Health Centre (St. John's)
- The General Hospital Health Sciences Centre (St. John's)
- Izaak Walton Killam Hospital for Children (Halifax)
- Centre Hospitalier Sainte-Justine (Montreal)
- The Montreal Children's Hospital (Montreal)
- The Children's Hospital for Eastern Ontario (Ottawa)
- The Hospital for Sick Children (Toronto)
- The Children's Hospital of Winnipeg (Winnipeg)
- University Hospital (Saskatoon)
- University of Alberta Hospital (Edmonton)
- Vancouver General Hospital (Vancouver)

In the collection of information, the ethical codes concerning research were observed in obtaining approval of the participating hospitals and in the collection of information. There was no identification of the names of the patients whose experience was documented.

In reporting the findings of the survey, the Committee recognized that the group of 623 cases for whom information was obtained does not constitute a sample of: all children in the population who have been sexually assaulted; all such victims who may have sought medical care; and cases of this kind examined by other services in the participating hospitals. The Committee acknowledges these limitations in relation to the findings obtained.

In light of the findings obtained in previous clinical research on the medical assessment of child sexual abuse and the documentation of injuries sustained, however, **the Committee believes that the medically assessed experi-**

ence of the 623 sexually abused children constitutes the largest group for whom such information has yet been obtained in Canada, and possibly, elsewhere. Until more complete information along these lines is available, the Committee believes that the survey's findings obtained from major hospitals across Canada constitute a reasonably reliable basis upon which to reach conclusions and upon which recommendations can be grounded.

The findings obtained in the National Hospital Survey are given in the following three sections of this chapter, respectively: characteristics of patients; medical examination and injuries; and hospital management of sexually abused children.

Characteristics of Patients

A summary of the characteristics of sexually assaulted children and youths examined and treated at the 11 hospitals is given in Chapter 7, *Dimensions of Sexual Assault*. These findings are not re-introduced here except to recall that victims known to hospitals typically were somewhat younger, more were females and more had experienced serious sexual assaults than victims whose experience was documented in the national population and police force surveys. As noted in Chapter 6, following an incident involving sexual assault, one of several types of assistance may or may not be sought, and only one of these involves turning to hospitals for medical care. It is reasonable to presume that when such assistance is sought, the victims, their families or guardians, and professional workers believed that medical attention was needed.

In comparison with how the police and child protection services learned of cases of sexually assaulted children and youths, the patients referred to hospitals fell in between the two polar trends involving patient and family-initiated contacts and those originating from professional services. Unlike cases known to the police in which a majority of the referrals were initiated by victims, family members and friends or acquaintances, these sources accounted for about a third (31.1 per cent) of the referrals of male patients and about two in five (44.3 per cent) of those for female patients.

What is unexpected in the findings of the National Hospital Survey is the small fraction of cases in which these patients were referred by other physicians. Such referrals were made for only one in 12 male patients (8.1 per cent) and for one in about 17 female patients (6.0 per cent). An inference that can be drawn from these findings is that physicians in community practice who treat sexually abused children may believe the care that they have provided is sufficient, and consequently, that the special services offered by a growing number of hospitals are not required.

A major difference between the sexually assaulted children seen at hospitals and those whose experience was documented in the other national surveys was the high proportion of incidents involving actual or attempted vaginal and anal penetration.

Acts Involving Actual/Attempted Penetration	Male Patients (n=74)	Female Patients (n=549)
	Per Cent	Per Cent
Vaginal penetration (actual/attempted)	—	64.4
Anal penetration (actual/attempted)	47.4	7.5
TOTAL	47.4	71.9

Attempted penetration included incidents in which a penis, finger/hand or object had been used by an assailant against a victim. Actual or attempted acts of penetration had been committed against over seven in 10 (71.9 per cent) young female patients and almost one in two (47.4 per cent) male patients. **In comparison with the children whose experience was documented in other national surveys, a majority of the patients examined at the 11 hospitals had been victims of serious sexual assaults, and on this basis, proportionally more may have sustained physical injuries and emotional harms.**

Medical Examination

Presenting Complaint

"Presenting Complaint" is a term used by physicians to refer to a problem as it is perceived and described to them by a patient. The presenting complaint may consis. of: a sensation, such as a pain in the abdomen; a visible entity like a swelling; a report of an occurrence, for example, exposure to an infectious disease; or a need for assistance, such as diet counselling in weight reduction. The presenting complaint may be identical to a physician's diagnosis, such as when a patient comes for help with acne, and the diagnosis is, indeed, acne. However, the diagnosis may be quite different from the complaint, for example, when a patient complains of back pain and the diagnosis is a kidney infection.

In the National Hospital Survey, the presenting complaint of about nine in 10 patients (88.8 per cent) was "alleged sexual abuse" (Table 31.1). For nine patients, incest was specified, and in one instance, an incestuous rape. Alleged sexual abuse by itself was the presenting complaint in 490 of 553 patients. Alleged sexual abuse associated with reproductive tract symptoms (pregnancy or genital discharge, infection, soreness, bleeding), behavioural problems (school difficulties, suicide attempt), abdominal or urinary problems, or physical abuse accounted for 43 of the 553 patients. Sexual assault, sexual relationship (both undefined in the charts) and rape, 11 cases in all, completed the alleged sexual abuse group.

Table 31.1

Presenting Complaints of Sexually Abused Children and Youths

Presenting Complaint	Males		Females	
	Number	Per Cent	Number	Per Cent
I. Alleged Sexual Abuse	68	91.8	485	88.3
• Alleged sexual abuse only (ASA)	61		429	
• ASA and vaginal discharge, bleeding, infection; pregnancy or vaginal/penile soreness, sexually transmitted disease (STD)	1		12	
• ASA and behavioural problems, school problems and suicide attempt	3		14	
• ASA and alleged physical abuse	2		9	
• ASA and abdominal pain or Enuresis	0		2	
• Incestuous Relationship	0		8	
• Rape/Incest	0		1	
• Rape	0		7	
• Sexual assault, recurrent and sexual relationship	1		3	
II. Alleged Physical Abuse or Injuries	2	2.7	6	1.1
III. Reproductive Tract Symptoms	0	—	22	4.0
• Vaginal discharge, discharge and abdominal pain, bleeding and STD	0		13	
• Pregnancy, contraception, therapeutic abortion	0		8	
• Vaginal laceration	0		1	
IV. Psychological/Behavioural	1	1.4	19	3.5
• Suicide attempt or ideation, drug overdose	0		9	
• Behavioural problems, need to talk, disturbed sleep, panic disorder, emotional assessment	1		10	

Table 31.1 (continued)

Presenting Complaints of Sexually Abused Children and Youths

Presenting Complaint	Males		Females	
	Number	Per Cent	Number	Per Cent
V. Physical Symptoms and Miscellaneous	2	2.7	15	2.7
• Abdominal pain, nausea and vomiting	0		5	
• Blackouts/fainting	0		2	
• Backache, pneumonia, asthma, visual impairment, hernia repair follow-up	1		5	
• Burn, hepatitis	1		1	
• Came for physical examination	0		2	
VI. Not Reported — Total	1	1.4	2	0.4
TOTAL	74	100.0	549	100.0

National Hospital Survey.

The presenting complaint in 22 of the 623 children involved reproductive tract symptomatology without allegations of abuse, including: vaginal discharge, bleeding, laceration or sexually transmitted disease (14 cases); pregnancy, contraception and therapeutic abortion (8 cases). Twenty children presented with psychological or behavioural problems. These problems included a suicide attempt, ideation or drug overdose in nine patients and a variety of behavioural disorders in 11 children.

For 17 children, the presenting complaint included a miscellaneous group of symptoms and occurrences. Among them were: abdominal pain, nausea/vomiting, fainting, backache, pneumonia, asthma, visual impairment, hernia repair follow-up, burn and hepatitis. In all of these patients, at some point during their management by the hospital, the sexual abuse came to light.

In summary, of the 623 children presenting at hospital, for 553 (88.8 per cent) the initial complaint was of alleged sexual abuse, 4.8 per cent presented with alleged physical abuse or injuries or reproductive tract symptoms, 3.2 per cent with psychological or behavioural problems, and the remainder with an

assortment of other conditions. On the basis of the types of presenting complaints documented, there is a relatively low proportion of potentially hard to diagnose cases. These findings run counter to conventional professional wisdom which states that many, if not most, cases of child abuse must be unearthed by wary and conscientious professionals. Some possible sources of bias accounting for the survey's results may include that:

1. Cases of "hidden" sexual abuse among the paediatric caseload of these hospitals were not so diagnosed, and therefore, were not included.
2. Cases without a presenting label of alleged sexual abuse, rape or a similar diagnostic category were inadvertently excluded in the case selection process.
3. Since a high proportion of these cases was referred by professional services and agencies, these referral sources identified the reasons for the referrals and viewed the hospitals as the most appropriate treatment service to deal with all of the clinical and social ramifications of the sexual abuse.

Physical Examinations

Of the 623 children, 526 (84.4 per cent) underwent a general physical examination immediately upon arrival in hospital. In addition, 413 had a gynaecological examination, 314 a more or less formal mental health assessment, 86 a social services' assessment and 52 a developmental assessment (these examination categories are not mutually exclusive). Some children had no examinations, and others had as many as three or four.

A general physical examination usually includes visual inspection, touching with hands (palpation) and the use of instruments to evaluate the condition of the entire body, with emphasis and more detail on the areas of concern. Ears, eyes, nose and throat, head, neck, chest, back, abdomen and extremities are normally all examined, and attention is paid to the internal organs, such as heart, lungs, liver, spleen, bowel and kidneys. On males, a complete physical should include at least a visual inspection of the penis, testicles, buttocks and anus, and a rectal examination with the finger, when indicated.

On female children, especially those not sexually active, inspection of the labia, hymenal opening, anus and buttocks would also usually be included in a general physical examination. However, if there were concern about rape, sexually transmitted disease or any genital or urinary tract trauma, a full pelvic examination, including speculum examination, internal examination (bimanual palpation) and the taking of cultures would be planned. The extent of the examination would depend on the age, size, maturity, prior sexual activity and present mental state of the child.

It is not possible to state the degree of completeness of the general physical examinations performed on the children about whom information was obtained in the National Hospital Survey. Many details of the examinations were not recorded in the questionnaires. Likewise, it is also not possible to

know whether the gynaecological assessment on girls was cursory or complete, or whether it was done as part of the general physical examination on some girls who were not specifically noted to have had a separate gynaecological assessment.

On the basis of the information available, it appears that these young patients received the following types of examinations immediately upon arrival in hospital.

Type of Examination	Males (n=74)		Females (n=549)	
	Number	Non. Accum. %	Number	Non. Accum. %
General physical	60	81.1	466	84.9
Pelvic/gynaecological	—	—	413	75.2
Mental health assessment	27	36.5	287	52.3
Social service assessment	12	16.2	74	13.5
Developmental assessment	7	9.5	45	8.2
Other (e.g., medicolegal, general interview, abortion or unspecified)	1	1.4	15	2.7
Laboratory tests	3	4.1	328	59.7

A general physical examination was performed on 526 children (84.4 per cent). Specific reasons were cited why 52 children had not received a general physical examination on arrival in hospital. Of these children, 27 had been examined previously or were to be transferred elsewhere, five refused examination, four demonstrated behavioural difficulties due to past sexual trauma and two did not come to hospital. In the latter instance, it was not known whether these children ever visited hospital at all, whether charts were opened on them as a result of a relative's visit or telephone call, or whether the child appeared once and did not reappear for an examination scheduled later. In nine cases, the examination was postponed and in three none was performed due to the time lapse between when the abuse had occurred and when the child had visited the hospital. For two children, no reason was specified. An additional 39 children were either not examined, or were examined, but there was no chart record of the examination.

Of the 526 children (466 girls, 60 boys) who underwent the general physical examination, 424 (80.6 per cent) were found to have no physical abnormalities, 373 females (80.0 per cent) and 51 males (85.0 per cent).

Reporting of Abnormalities	Males (n=60)		Females (n=466)	
	Number	Per Cent	Number	Per Cent
Abnormalities found	9	15.0	93	20.0
No abnormalities found/Not reported	51	85.0	373	80.0
TOTAL	60	100.0	466	100.0

Positive findings (not mutually exclusive) included: 106 occurrences of bruising, abrasions, scratches or welts; 14 lacerations; three bites; seven burns, including one cigarette burn; and one sprain. Five children demonstrated inflammation, chapped skin or tenderness in the chest area, and in 17 cases the findings were listed as "other" and not specified.

Abnormality/ies Found	Males	Females
	Non-Accumulative	
Bruising	6	64
Abrasions	1	16
Scratches	—	17
Lacerations	2	12
Burns	3	3
Bites	—	3
Cigarette burns	1	—
Welts	—	2
Sprains	—	1
Inflammation	—	1
Chapped skin around mouth	—	1
Tenderness around chest	1	2
Unspecified	1	16
TOTAL NUMBER OF ABNORMALITIES FOUND	15	138

Gynaecological Examination

A gynaecological examination was carried out on 413 of 549 girls. For the remainder, no explanation was given for the lack of examination of 54 cases. (As noted previously, it is possible that inspection of the genitals, anus, perineum and buttocks had occurred as part of the general physical examination and was not recorded separately. This would most likely have been the case for the younger girls). Of the remaining 82 girls who had no gynaecological examination, in 36 cases this procedure had been postponed; in 13, it had already been performed by another physician; in 19, the examination was considered unnecessary; in six, the patient refused; in another six, the reason for no examination was the time elapsed between the event and the patient's arrival in hospital; and, finally, two patients did not come to hospital.

The component parts of the gynaecological examination varied considerably. Vaginal swabs were taken from 305 girls, vaginal washings were obtained from 79 and cervical swabs from 152. A bi-manual examination was performed on 191 of the female patients and a speculum examination on 193. Pregnancy tests were done on 104 of the girls and a V.D.R.L. on 294. Anal and rectal swabs were taken on 162 and 157, respectively.

The variation in the frequency with which the different examinations were undertaken may be partially accounted for by the ages of the girls and by the nature of the reported abuse. For example, speculum examination, bimanual examination and cervical culture might not be performed on prepubertal girls or on those who denied that vaginal penetration had occurred. It must also be remembered, that these examinations can be physically and/or psychologically traumatic for some girls, and that they should only be performed with good reason.

The findings on the gynaecological examination were as follows:

Labia — 250:

Normal appearance (150 not reported or not applicable). Among those examined and demonstrating pathology, there were the following signs (some children may have had more than one finding):

Laceration	10
Scratches or abrasions	18
Erythema or inflammation	29
Bleeding, bruising or hyperemia	16
Discharge	4
Adhesions	1
Small pimple, rash, infection or other	5
Total	83

Hymen — 239:

Normal appearance, including the following designations:

No signs fresh trauma	55
Intact	89
Tight or not lax	72
Normal	23
Total	239

The condition of the hymen was not noted for 135 girls and the examination was considered not applicable for 134.

Pathology of the hymen included:

Hyperemia, erythema	3
Tears, splits, lacerations	17
Bleeding	5
Edema	1
Old scars, adhesions/lacerations	3
Lacerations of introitus	1
Total	30

Vagina — 185:

Normal appearance: the condition of the vagina was not noted in 133 girls; the examination was considered non-applicable in 60, and was impossible for two girls due to pain.

Vaginal findings were difficult to interpret, since vaginal discharges, vaginitis, vulvitis and erythema are not uncommon findings, even in sexually inactive girls. However, they were reported by physicians as follows:

Discharge	95
Bleeding	18
Menstruating	8
Bruising	11
Inflammation (e.g., vulvitis, vaginitis)	5
Infection/warts	4
Larger than normal for age	2
Surgery re: lacerations	2
Erythema	7
Total	152

Breasts (girls) — 180:

Normal appearance: for 233, the condition of the breasts was not noted; for 58, it was considered non-applicable. In younger, pre-pubescent girls, the breast area may not have been specifically noted.

Pathological findings included:

Lacerations	1
Bruising	6
Burns	1
Scratches	1
Erythema	1
Other	3
Total	13

Examination of Male Genitalia

Penis

The condition of the penis was not noted on the chart or such examination was deemed inapplicable for 22 of the 74 boys. For 43 boys, the penis was found to be normal.

Pathological findings included:

Lacerations	1
Bruising	1
Inflammation	1
Infections	1
Pain	1
Erythema	1
Discharge	1
Total	7

Testicles

The condition of the testicles was not noted on the chart or such examination was deemed unnecessary for 26 boys. For 39 boys, the testicles were exam-

ined and found to be normal in appearance. There were two boys for whom palpation of the testicles was painful (no other pathology noted).

Both Sexes — Examination of Perineum, Buttocks, Rectum and Anus

Perineum

The condition of the perineum was deemed not applicable and/or not noted for 304 children and was found to be normal on examination of 212 (29 boys, 183 girls). Among the remaining children, the findings included:

Condition	Males	Females
Bleeding	—	7
Splits/tears	—	9
Inflammation or irritation	—	14
Infection	—	1
Bruising	—	4
Erythema	1	25
Total	1	60

In addition to the above conditions, seven children were found to demonstrate "poor hygiene" in the perineal area.

Buttocks

The condition of the buttocks was considered not applicable and/or not noted for 372 children, and was found to be normal for a further 115. Other findings included:

Condition	Males	Females
Laceration	—	1
Bite	—	1
Scratches/abrasions	—	5
Bruising/erythema	4	7
Drawing on buttocks	—	2
Total	4	16

Anus

The condition of the anus was not noted (or was considered inapplicable) for 340 children. It was considered to be normal for 163. Five children were found to have poor hygiene in the area and two males complained of pain on defecation. Other findings included:

Condition	Males	Females
Loose anal ring	2	1
Bleeding	1	2
Tears	1	3
Swelling	1	2
Inflammation	3	—
Spasm	—	1
Bruising/tenderness	4	4
Total	12	13

Rectum

It is not known whether examination of the rectum included digital and/or visual examination. The report of "poor hygiene" in two cases suggests that positive response to rectal examination may have included those situations in which only inspection of the perineum and anus was carried out. The condition of the rectum was not noted or such examination was considered inapplicable in 373 cases, and the rectum was examined and found normal in 150. Positive findings included, in addition to two cases of "poor hygiene":

Condition	Males	Females
Inflammation	1	1
Lesion (unspecified)	1	1
Tear	—	1
Total	2	3

Other Conditions

Other conditions thought to be present in the children included:

Condition	Males	Females
Genitourinary infection	—	20
Primary syphillis	1	1
Gonorrhea	—	12
Pregnancy	—	4
Suspected sexually transmitted disease	—	4
Pelvic Inflammatory Disease	—	1
Herpes Simplex type I	1	1
Vaginal warts	—	1
Unspecified	—	14
Total	2	58

Physical Injuries and Harms

Of the children examined in hospital, about four in five had no abnormalities on general physical examination. Of those having positive findings, bruising, abrasions and scratches accounted for a majority of the conditions. The 14 children with lacerations and the seven with burns were the only ones with physical injuries that could be deemed medically serious, but for these cases, the extent of damage was not fully documented. Even assuming all of these children had been seriously injured, they represent less than one in 20 of those examined requiring significant medical attention.

Among the girls, three in four (75.2 per cent) underwent gynaecological examination. Of this group, 10 had labial lacerations, 22 had hymenal tears, 18 had vaginal bleeding (presumably non-menstrual), two had vaginal lacerations requiring surgery, one had a breast laceration and one a burn on the breast. Sixteen girls had perineal tears or bleeding, one had a laceration of the buttock, four had anal-rectal tears and 43 were thought possibly to have a sexually transmitted disease. In all, about a third of the presenting findings appear to

have required medical attention. (This may have been less than a third of girls, since some had more than one finding).

Among the boys, one had a penile laceration, one an infection of and one a discharge from the penis. One had an anal tear.

Under certain circumstances, admission as an inpatient to hospital might be considered as an indication of the severity of the physical injuries sustained by sexually assaulted children. Such admissions were made on behalf of one in 14 cases (7.1 per cent), but a review of the experience of these children suggests that in relation to the types of sexual acts committed against them and the physical injuries sustained, that they differed little in these respects from those children who had been treated as ambulatory outpatients.

A disproportionate number of the 44 patients admitted to hospital, in comparison to other patients in the survey, were older children. The ages of these children were:

Age	Per Cent
Under age 7	27.9
7–11 years	16.3
12–13 years	13.9
14 years and older	41.9

Of the 623 children presenting at hospital, 71.9 per cent had been victims of actual or attempted acts of vaginal or anal penetration. Of the children admitted as inpatients, 69.8 per cent had experienced acts of this kind. With regard to the types of physical injuries that they had sustained, about a third each had had none (30.2 per cent), some (37.2 per cent) or injuries which could be deemed serious (32.6 per cent).

It is noteworthy in this regard that two of the 11 hospitals accounted for more than half (55.8 per cent) of the children admitted as inpatients. The findings obtained in relation to whether sexually abused children were admitted as inpatients to hospital suggest that this action was often taken for custodial purposes, and in some instances, to permit further investigations.

On the basis of the medical charts reviewed in the National Hospital Survey, 20 of the children (17 girls, 3 boys) were noted as suffering "serious" general or gynaecological/genital injuries. This group represents 3.2 per cent of all of cases.

From a medical standpoint, the most striking aspect of the physical findings is that most of the actual injuries sustained by the sexually abused children who were medically examined appear to be minimal. A small number of the children had lacerations, more had bruising, redness and inflammation, and only one in 14 was admitted to hospital, many for custodial purposes or for further investigation. Supporting this conclusion were the results of a question in the survey which asked, in the opinion of the attending professional staff, whether the child had suffered any long-term physical harms as a result of the

sexual abuse. It was reported that about one in 42 children (2.4 per cent) in the judgment of these professionals fell into this category.

If the children with harms documented on the basis of the general physical examination are taken together — girls with gynaecological harms and boys with genital harms — then these total 143 children of the 623 patients presenting to hospital. In other words, on the basis of the medical examination of sexually assaulted children and youths, a maximum of about one in four (23.1 per cent) may have required medical attention, and in many instances, only physical injuries of a minor nature had been sustained or the care was required for conditions other than those related to the sexual abuse. These children were more likely to have suffered psychological and emotional harms, the findings presented next, than to have been victims of physical injuries.

Mental State Examination

Many physicians, consciously or unconsciously, make an assessment of the mental state of their patients whenever patients are seen. If a patient's emotional, behavioural and thinking patterns appear to be within the normal range and are unchanged from previous visits, then no note may be made in the chart. However, if a patient was excessively depressed or elated, if his or her thinking patterns seemed bizarre, or if he or she demonstrated unusual behaviour, the physician would likely make a note in the chart or, at least, would tend to remember the abnormal pattern.

In the National Hospital Survey, several questions dealt with manifestations of the patient's mental state. One related to the observed behaviour and emotional state noted in the initial examination. This first examination may not have included a formal mental health assessment (e.g., patients coming to the emergency room), and hence, observations on the demeanour of the patient may have been recorded simply because they were noteworthy or because the presenting complaint (e.g., alleged sexual abuse) suggested the need for documentation of mental state. During the initial examination or on a subsequent visit to hospital, a mental health assessment may have been made either by the principal examiner or by means of referral of patients to other hospital services. Where information on these assessments was recorded, these findings were documented in the survey. Finally, information was sought in the survey about the emotional and behavioural reactions of children which were considered by attending staff to have resulted from sexual abuse. Reactions of this kind were judged not to have preceded the abuse and were attributable to it having occurred.

Initial Impressions. It is difficult and highly subjective to attempt to classify children's behaviours or emotions as positive or negative, since, for example, a crying child might well be reacting more appropriately in a stressful situation than one gaily chatting who is suppressing fear or anger.

Table 31.2

Initial Impressions of Physicians of Sexually Abused Children: *Behavioural* Reactions

Initial Clinical Impressions of Behavioural Reactions	Males (n=74)		Females (n=549)	
	No.	Non-Accum. %	No.	Non-Accum. %
Distressed/Unco-operative	8	10.8	161	29.3
• crying, sobbing, weeping	1		52	
• fidgeting, pacing, nervous	2		28	
• recoiled, flinching, shy	4		41	
• fearful, resisted examination	1		40	
Neutral/Passive	12	16.2	79	14.4
• no visible reaction	6		19	
• silent, apathetic	6		60	
Not Distressed/Co-operative	45	60.8	279	50.8
• alert, active, lucid	19		104	
• body relaxed	3		30	
• smiling, humming	5		25	
• outgoing, talkative	9		40	
• talked freely about abuse	9		80	

National Hospital Survey

Table 31.3

Initial Impressions of Physicians of Sexually Abused Children: *Emotional* Reactions

Initial Clinical Impressions of Emotional Reactions	Males (n=74)		Females (n=549)	
	No.	Non-Accum. %	No.	Non-Accum. %
Distressed/Unco-operative	18	24.3	250	45.5
• angry	—		10	
• hysterical, demanding	—		8	
• irrational, confused	1		5	
• depressed, worried	3		42	
• reluctant to discuss	7		66	
• distressed, upset	4		80	
• frightened	3		39	
Neutral/Passive	2	2.7	28	5.1
• didn't think it abuse	—		13	
• flip, embarrassed	2		15	
Not Distressed/Co-operative	61	82.4	310	56.4
• calm, composed	18		86	
• cheerful, happy	12		47	
• co-operative	18		115	
• responsive, related well	13		62	

National Hospital Survey

Notwithstanding this observation, it is valuable to note how these children presented themselves, since certain behaviours may eventually turn out to be prognostic indicators. The behavioural and emotional presentation of the children is divided into: distressed/unco-operative; neutral/passive; and not distressed/co-operative. These findings noted by the principal examiner are listed in Tables 31.2 and 31.3.

Lacking a control group, for instance, having findings about the customary demeanour of children coming to emergency services, it is unknown whether the reported reactions of sexually abused patients were usual or markedly different from those of other children. The findings indicate somewhat different reactions by males than by females, with considerably more of the latter being distressed or unco-operative in both behavioural and emotional reactions.

Typologies have sometimes been developed which list the reactions said to be characteristic of children who have been sexually abused. The survey's findings in relation to the initial impressions of attending examiners reveal that there was no stereotypic demeanour presented by victims. On the contrary, the findings clearly show a full range of behaviours and emotions, from children who were very distressed to those who were apparently composed and happy.

Case Studies. Before presenting the statistical findings obtained in relation to the mental state assessment of sexually abused children, a number of case studies are given which show the types of harm attributable to offences of this kind. The excerpts were taken from the notes in patients' charts made by attending professional health workers.

Case Study 1. Two year-old boy who experienced attempted anal intercourse by a male babysitter. Attending professional's comment: "It is unlikely that this child will have any long-term effect as a result of this incident by itself — but if the mother continues to remain anxious and under distress, the child may eventually react to the mother's extreme over-protectiveness."

Case Study 2. Three year-old boy who experienced anal intercourse by an unknown male. Social worker's comment: "Patient's behaviour has changed for the worse since the time of the assault: temper tantrums, angry testing episodes, difficult to manage, encopresis, wild behavioural misconduct."

Case Study 3. Three year-old girl who was the victim of thigh intercourse, oral-anal contact and an object inserted in her vagina by a family friend. Psychiatrist's comment: "Since sexual abuse, child fondles mother's male friends and is involved in bestiality, bizarre dreams and tantrums."

Case Study 4. Six year-old boy sexually fondled by father. Attending professional's comment: "Will require long-term counselling".

Case Study 5. Six year-old girl sexually fondled by uncle. Attending professional's comment: "Serious emotional aftermath; preoccupation with sex; severe anxiety."

Case Study 6. Seven year-old girl sexually fondled by father. Attending professional's comment: "Fear that court order (two years probation and no visiting rights) and sexual abuse had forced her to give up hope of ever having a relationship with her dad . . . fear of abandonment by mother now that she had lost her father."

Case Study 7. Nine year-old girl, victim of thigh intercourse, attempted rape and vaginal penetration by a finger by a neighbour. Social worker's comment: "Patient now exhibits difficulty sleeping and preoccupation with incident."

Case Study 8. Nine year-old girl raped by adoptive father, grandfather and her two brothers. Psychiatrist's comment: "Patient does not know how to approach male adults in any other way than in a fashion which would be considered to be very seductive. Patient sexualizes all relationships with males, has disturbing dreams and would like to go home to adoptive parents, but is simultaneously fearful of them. She will require long-term sexual psychiatric treatment".

Case Study 9. Nine year-old girl, victim of a finger penetration in her vagina. Social worker's comment: "A psychological trauma is anticipated, even if the patient has adequate parenting. She is afraid of being alone, of the dark and perhaps in the future, of men."

Case Study 10. 10 year-old girl whose genitals were fondled by a family friend. Social worker's comment: "Patient is now suffering from anxiety, sleeplessness, separation anxiety and nightmares."

Case Study 11. 10 year-old girl, finger penetration of vagina by her stepfather. Paediatrician's comment: "Patient panics when left alone or is in a crowd; she believes everyone knows she was involved with incest; has been eating compulsively; provocative to peer group males; phobia of older men."

Case Study 12. 11 year-old girl who was tied up and forced to witness a friend being raped by a stranger. Psychiatrist's comment: "Patient became a compulsive eater (30 plus pounds in three months). At one point, she stated that she was only staying alive for her mom and dad's sake. Mother states that child has feelings of lack of self-worth. Child is scared at night of someone breaking into the house. She feels down most of the time; there is no fluctuation in this. She thinks she would be better off dead because she wouldn't have to deal with troubles. All in all, a very depressed, angry little girl."

Case Study 13. 11 year-old girl raped by her stepfather. Attending professional's comment: "Lost interest in school work and activities she used to enjoy; withdrawal; severe depression."

Case Study 14. 11 year-old girl sexually fondled by her father. Attending professional's comment: "Guilt because father is on probation; depression; sexual preoccupation."

Case Study 15. 11 year-old boy, anal intercourse and fellatio by foster father. Attending professional's comment: "Problems at school; personality disorder."

Case Study 16. 11 year-old boy, anal intercourse by friend's father. Attending professional's comment: "Fear of adult males; questions his own sexuality."

Case Study 17. 12 year-old girl, raped by foster father. Attending professional's comment: "Danger of sexual abuse, promiscuity and prostitution; preoccupation with sex."

Case Study 18. 12 year-old girl, genitals fondled by mother's common-law partner. Social worker's comment: "Sexual acting-out; very low self-esteem; negative behaviour; harming herself. This, plus her whole family turning against her, has led to a very disruptive life for a 12 year-old girl."

Case Study 19. 13 year-old girl, sexually fondled by her father. Attending professional's comment: "Long-term emotional and social problems because the family don't believe her."

Case Study 20. 13 year-old girl, fellatio and attempted rape by her stepfather. Attending professional's comment: "Attempted suicide; drug use; guilt."

Case Study 21. 13 year-old girl, was raped by her uncle, became pregnant and had an abortion. Attending professional's comment: "Guilt about rape and aborting baby; will need long-term one-to-one therapy."

Case Study 22. 13 year-old girl, sexually molested by her mother, had intercourse with mother's common-law partner. Attending professional's comment: "Attempted suicide; severe depression; withdrawal."

Case Study 23. 14 year-old girl, raped by her father. Attending professional's comment: "Depression; guilt re sexual abuse; will require ongoing intervention in the family situation as well as psychotherapy."

Case Study 24. 14 year-old boy, victim of anal intercourse by mother's common-law partner. Attending professional's comment: "Preoccupation with sex; attempted bestiality."

Case Study 25. 15 year-old girl, raped by her father. Attending professional's comment: "Patient feels guilty: 'If I didn't tell anyone, no one would ever know and my father would be in no trouble'."

Case Study 26. 15 year-old girl, sexually fondled by her mother's common-law partner. Social worker's comment: "Patient experiences concerns about her own sexuality and an 'emotional deadening' towards males her own age; tends to overeat. Feels she has few friends, partly through choice, because she does not 'trust' people."

Case Study 27. 15 year-old girl, raped and forced to commit fellatio by five unknown males. Attending professional's comment: "This young girl's total behaviour — home, school, family and peer group disintegrated after incident. If no proper psychotherapy follow-up, prognosis bad."

Case Study 28. 15 year-old girl, sexually molested by uncle. Attending professional's comment: "Suicidal; negative social behaviour."

Case Study 29. 15 year-old girl, raped by her uncle and her mother's common-law partner. Attending professional's account: "Long-term problems; tried to harm herself with a knife; very anxious."

Case Study 30. 16 year-old girl, raped when she was age 11 by three cousins. Social worker's comment: "Emotional, developmental and social growth affected . . . has become involved in negative behaviour i.e., sexual promiscuity, drug abuse. Self-image is poor—sees herself as a sexual object that has been abused. High need for intimacy which patient has not been able to meet in a satisfying way therefore causing lack of trust in people and in herself."

Case Study 31. 17 year-old girl, raped by her father when she was age 13. Psychologist's comment: "Patient needing intense counselling and support during this period to help her work through her feelings. Patient stated she felt like a prostitute at times, has had thoughts of killing herself, and portrays a very low self-esteem."

The case studies provide deeply personal dimensions to the summary statistics about the types of emotional and behavioural problems experienced by children who have been sexually abused. It is evident, even in children as young as two or three years-old, that there can be major behavioural changes and symptoms of severe psychological distress. The manifestations of distress can be general — anger, tantrums, nightmares or sexually oriented, such as the three year-old girl who fondled her mother's male friends.

Another clinically important point illustrated by the case studies is that fondling and other acts which might be considered less traumatic than vaginal and anal intercourse, can cause significant levels of disturbance in the child. For almost all of the very young children, the attending health professionals allude either to the need for long-term therapy or they describe symptoms that seem serious and that are unlikely to be resolved quickly or without assistance for the child and family.

The case studies for slightly older children, those between ages 10 and 12, demonstrate a multifaceted psychopathology. Depression in its various manifestations occurs often. Harm to self and suicidal thoughts become more obvious in this age group, as do preoccupation with sex and sexual acting out. Among some of the girls, compulsive eating became a compensating behaviour. For children in this age group, the excerpts from the patients' charts indicate that the emotional and psychological harms were serious and, in some instances, would require a significant amount of treatment.

A number of different reactions become evident when the experience of adolescent victims is considered. These adolescent girls seem to feel and express guilt, shame and a loss of self-worth. Depressive symptoms were evident and there were suicide attempts as well as drug use. Particularly poignant is the verbalization of a loss of trust. Several of the girls expressed fear of men, but two at least seemed to have lost the ability to trust friends or persons in general. The sense of betrayal emanates from their comments. Doubts about sexuality, fear of the opposite sex and lack of trust combined would suggest that disturbed sexual relationships later in life may be an outcome for some of these sexually abused children.

Mental State Assessment

A mental state assessment of a sexually abused child may have been made in the course of the initial presentation, have been done then and followed later by a fuller assessment, or no such examination may have been provided. During the pretest stage of the National Hospital Survey, it was realized that in some instances, patients' charts were incomplete in relation to certain types of information being sought. Where this occurred, an attempt was made to seek missing information from members of the professional staff who had attended or had known about these patients.

On the basis of the findings obtained in the survey, it was found that 60.8 per cent of the males and 70.3 per cent of the females who had been sexually abused were reported to have had some form of mental assessment during their initial presentation to hospital or during the first scheduled follow-up visit. No information was reported concerning such assessments for two in five male victims (39.2 per cent) or for about one in three female victims (29.7 per cent). Of the 431 children for whom such information was recorded, the mental state assessment had been given for 304 (70.5 per cent) during their initial presentation to hospital.

Table 31.4

Examining Professional's Impressions of Mental State of Sexually Abused Children

Findings of Mental State Examination	Males (n=74)		Females (n=549)	
	No.	Non-Accum. %	No.	Non-Accum. %
Distressed/Unco-operative	11	14.9	165	30.1
• depressed, worried	2		53	
• distressed, crying, tense	7		82	
• reluctant, negative, frightened	1		26	
• hysterical, irrational	1		4	
Neutral/Passive	1	1.4	3	0.5
• no visible reaction	1		3	
Not Distressed/Co-operative	22	29.7	177	32.2
• calm, sensible, relaxed	17		142	
• cheerful, happy, attentive	5		35	
Other Reactions	19	25.7	145	26.4
• hyperactive, fidgeting nervous	6		39	
• immature, flip, nervous	3		27	
• personality disorder (behavioural problem, neurotic, psychotic)	5		21	
• retarded, inarticulate	4		27	
• other	1		31	
No Report of Mental Health Examination	29	39.2	163	29.7

National Hospital Survey

The findings of these assessments (Table 31.4) are generally comparable to those noted in the initial impressions of the professional staff who had examined these patients. On the basis of these assessments, it was found that sexually abused children displayed a wide range of emotional and behavioural reactions and that girls were about twice as likely as boys to have been distressed or unco-operative. About a third of the children of both sexes were reported to have shown no visible distress.

Provision of Mental State Assessment	Males		Females	
	No.	Per Cent	No.	Per Cent
Physician at time of initial presentation	29	39.2	275	50.1
Psychiatrist	2	2.7	33	6.0
Psychologist	4	5.4	22	4.0
Medical social worker	1	1.3	25	4.5
Admitting nurse	7	9.5	24	4.4
Other professionals	2	2.7	7	1.3
No report of assessment given	29	39.2	163	29.7
TOTAL	74	100.0	549	100.0

In considering these findings, it is unknown how many of the children's reactions are attributable to sexual abuse, to how they may comport themselves in hospital, to their previous experience with physicians and hospital personnel, or to their general behavioural patterns irrespective of these considerations.

Psychological and Emotional After-effects of Sexual Abuse

Information was obtained in the survey about the reported psychological and emotional after-effects to children of sexual abuse. In all, a total of 985 psychological and behavioural reactions was recorded which in the judgment of the attending staff were considered to have resulted from (and post-dated) the sexual abuse (Table 31.5). This is a huge pathological load. The most frequently reported reactions included: insomnia, nightmares, and fears of going to bed alone; general school problems; angry outbursts, running away; fear, anxiety, guilt and embarrassment, and depression.

Psychological and Behavioural Reactions Following Sexual Abuse	Males (n=74)		Females (n=549)	
	No.	%	No.	%
None, not reported	34	46.0	281	51.2
One or more signs	40	54.0	268	48.8
Judged by professional examiners to be long-term harms	14	18.9	97	17.6

For one in two children (50.6 per cent), no psychological and behavioural consequences attributable to sexual abuse were reported. Of those for whom these reactions were recorded, on average, female patients had 3.4 and boys had 2.1.

In the judgment of attending hospital staff, about one in six (17.8 per cent) sexually abused children was considered potentially to have suffered long-term emotional and/or behavioural harm. The proportions were comparable for male (18.9 per cent) and female victims (17.6 per cent). These findings contrast sharply with the proportion of children requiring medical attention for various physical ailments (23.1 per cent) and the number who were considered to have suffered long-term physical harms (2.4 per cent) resulting from sexual abuse.

Table 31.5

Psychological and Social Behaviour Exhibited by Patients Following Sexual Abuse

Psychological and Social Behaviour Exhibited Following Sexual Abuse	Males (n=74)		Females (n=549)	
	No.	Non-Accum. %	No.	Non-Accum. %
None, not reported	34	46.0	281	51.2
Irritability	5	6.8	31	5.6
Unnecessary, persistent fears	5	6.8	70	12.8
Anxiety	1	1.4	3	0.5
Angry outbursts	7	9.5	38	6.9
Guilt	—	—	2	0.4
Excessive dependency	3	4.1	30	5.5
General depression	2	2.7	49	8.9
Enuresis	2	2.7	18	3.3
Encopresis	1	1.4	1	0.2
Anuresis	—	—	1	0.2
Dysuria	—	—	1	0.2
Thumbsucking, nailbiting	—	—	8	1.5
Withdrawal	2	2.7	44	8.0
Lack of motivation for play	2	2.7	11	2.0
Less verbal communication	1	1.4	25	4.6
More verbal	—	—	1	0.2
Change in behaviour with peers at school	5	6.8	38	6.9
Truancy, chronic absenteeism	—	—	21	3.8
Lack of interest in school	2	2.7	40	7.3

Table 31.5 (continued . . .)

Psychological and Social Behaviour Exhibited by Patients Following Sexual Abuse

Psychological and Social Behaviour Exhibited Following Sexual Abuse	Males (n=74)		Females (n=549)	
	No.	Non-Accum. %	No.	Non-Accum. %
Preoccupation with abuse	5	6.8	39	7.1
Disturbed sleep pattern	5	6.8	65	11.8
Fear of going to bed alone	—	—	12	2.2
Nightmares	6	8.1	66	12.0
Loss of appetite	1	1.4	23	4.2
Vomiting	—	—	12	2.2
Nausea	—	—	13	2.4
Overeating	—	—	10	1.8
Heightened embarrassment/ disgust	1	1.4	7	1.3
Difficulty completing routine tasks	2	2.7	11	2.0
Acting out, running away	6	8.1	34	6.2
School failure	2	2.7	16	2.9
Unusual sexual behaviour	4	5.4	24	4.4
Masturbating	—	—	1	0.2
Transvestite	1	1.4	—	—
Questions of sexual behaviour	3	4.1	19	3.5
Fear of pregnancy	—	—	14	2.6
Fear of venereal disease	—	—	4	0.7
Suicidal behaviour	2	2.7	23	4.2
Drug, alcohol use	1	1.4	22	2.0
Other	6	8.1	72	13.1

National Hospital Survey

Although the clinical information about the mental health state of sexually abused children following these incidents was not documented for all children in the survey, there can be no doubt that **the main findings are that substantially more children were found to have been emotionally harmed than had been physically injured, and that proportionately, long-term emotional harms were over six times as likely as long-term physical injuries to be consequences of child sexual abuse.** While the survey's findings on the mental state of sexually abused children are incomplete in relation to information obtained from

the initial impressions of professional health examiners and the mental state assessments made during or shortly after the child's initial presentation to hospital, the emotional and psychological needs of the children were clearly recognized by attending hospital staff. Follow-up care was recommended for about nine in 10 patients (88.1 per cent), and for most of them, referrals were made for mental health assessment, social work assessment and counselling.

Hospital Management of the Patient

The hospital management of the patient begins with his or her first presentation in person (occasionally by telephone) and continues until final discharge. Discharge may not mean the end of care, merely that any further management is not under the aegis of the hospital itself. For example, some patients may be referred to physicians or other health personnel not affiliated with the hospital.

Referrals to Hospital

In Chapter 7, *Dimensions of Sexual Assault*, a summary is given of children referred to different public services. In the National Hospital Survey, it was found that slightly over half of the sexually abused children examined at the hospitals surveyed were referred by a professional individual or an agency. About two in five of the hospital visits were initiated by the families or friends of victims.

Hospital Service First Seeing Patient

A majority of child abuse victims were initially seen in the emergency room. There were no reports about the initial service provided for seven children (six girls, one boy). A total of 406 children (65.2 per cent) was first seen in the emergency room; this group included 361 girls and 45 boys.

Why was the emergency room the initial service turned to by so many sexually abused victims? Was it by chance or by choice? The hustle and bustle of the typical emergency department appear to make it the least appropriate service in a hospital to provide optimal care to a victim of child sexual abuse. Several factors may account for the high level of use of this department.

Although patients arriving at the emergency department in most large hospitals are asked by a clerk or nurse what their problem is, information about sexual abuse may have been withheld by the patient (or accompanying individual) until she or he was alone with the medical examiner. In some cases, the patient may have named another related or unrelated problem, for example, bruising or vaginal discharge in order to avoid a discussion of sexual abuse until meeting the doctor. Another possibility is that since most hospital clinics

Table 31.6

Hospital Service by Patients Initially Attended

Service	Males		Females	
	No.	%	No.	%
Emergency Room	45	60.8	361	65.7
Gynaecology	1	1.4	35	6.4
Family Medicine	2	2.7	4	0.7
Medical Outpatient/ Ambulatory Services	8	10.8	19	3.5
Medical Social Service/ Social Work	2	2.7	16	2.9
Paediatric Service	2	2.7	28	5.1
Psychiatry	2	2.7	11	2.0
Teen/Adolescent Clinic	2	2.7	28	5.1
Child Protection/ Abuse Team	1	1.4	18	3.3
Sexual Abuse Team	8	10.8	18	3.3
Developmental Clinic	—	—	1	0.2
Children's Clinic	—	—	4	0.7
Not reported	1	1.4	6	1.1
TOTAL	74	100.1*	549	100.0

National Hospital Survey. Charts were opened for two patients not presenting at hospital.

*Rounding error

and physicians schedule their work during the day, if patients arrived outside of these normal working hours, the emergency room might be the only place where treatment was available. For the 621 patients who presented to hospitals (two did not), there was information on the arrival time of 448. Sixty-three patients arrived between midnight and 8.00 a.m., another five between 8.00 and 9.00 a.m., 198 between 9.00 a.m. and 5.00 p.m., 23 between 5.00 and 6.00 p.m., and 159 between 6.00 p.m. and midnight. Thus, while 226 children appeared in hospital between 8.00 a.m. and 6.00 p.m., an almost equal number, 222, arrived outside normal working hours.

In addition to these considerations, a sizeable number of referrals were made by professional workers. It is possible that they may have made inappropriate follow-up arrangements for the children, that it was deemed the child needed prompt medical attention, or that the visit was scheduled to obtain forensic evidence. The findings show clearly, however, that it was not the special child abuse or child sexual abuse programs, where such programs had been established, to which most of the patients initially presented themselves.

Of the children first seen by departments other than the emergency service, 36 were seen by the gynaecology service (35 girls and one boy — the boy

for reasons not explained), 30 in teen or adolescent clinics, 30 in the paediatric clinic, 27 in the medical outpatient or ambulatory care service, 26 by the sexual abuse team, 19 by the child protection or abuse team, 18 by the social service/social work department, and the remainder by family medicine, psychiatry, developmental or children's clinics. In general, with the predictable exception of the gynaecology service, the proportions of boys and girls seen in the various services were similar; the exceptions were that 10.8 per cent of boys compared to 3.5 per cent of girls were seen in medical outpatient and ambulatory services, and 10.8 per cent of boys, but only 3.3 per cent of girls were seen first by the sexual abuse team.

Principal Staff Member Conducting Initial Examination

The principal staff member conducting the initial examination was the emergency room physician in 206 cases, the paediatric resident in 109, the sexual abuse team or a member of it in 82, the child abuse team in 55 cases, a paediatrician in 60 cases, and a gynaecologist in 31 cases.

Table 31.7

Principal Staff Member Conducting Examination

Staff Member Conducting Examination	Males		Females	
	No.	Per Cent	No.	Per Cent
Child Protection Abuse Team	1	1.4	12	2.2
Sexual Abuse Team	1	1.4	8	1.5
Member of Child Protection/ Abuse Team	4	5.4	38	6.9
Member of Sexual Abuse Team	10	13.5	63	11.5
Emergency Room Physician	19	25.6	187	34.1
Family Practice Resident	1	1.4	7	1.3
Gynaecologist	—	—	31	5.6
Medical Social Worker	1	1.4	10	1.8
Paediatrician	12	16.2	48	8.7
Paediatric Resident	18	24.3	91	16.6
Psychiatrist	2	2.7	17	3.1
Gynaecology Resident	—	—	7	1.3
Pathologist	2	2.7	11	2.0
Other	2	2.7	9	1.6
Not reported, inapplicable	1	1.4	10	1.8
TOTAL	74	100.1*	549	100.0

National Hospital Survey.

*Rounding error

The sex of the principal examining staff member was ascertained and reported for 390 children. Among the 43 boys for whom this was known, 27 (62.8 per cent) were examined by male staff, 15 (34.9 per cent) by female staff and one by both. Of the 347 girls, 178, or just about half (51.3 per cent) were examined by male attending staff. Whether the child had an adverse reaction to the sex of the staff member was reported only in 177 cases. Of these, 14 children were recorded as having had an adverse reaction; 163 did not. The 14 were all girls; the examining physician was male in 11 cases, female in two and not reported in one. (With no reports for 446 cases, the significance of findings for 14 of 163 cases is questionable). Seven girls requested another physician.

Termination of Care After Initial Presentation

For 17 patients (six males, 11 females), hospital care was terminated by attending staff immediately following discovery of sexual abuse. The reasons noted were: further care was not recommended (3); the patient refused care (3); the patient's family refused care (1); the patient didn't come to hospital (1); the patient was referred to external agency (6); the patient didn't keep the appointment (2); and the police had arrested the offender (1).

Follow-up Care

In view of the complexity of the possible harms resulting from child sexual abuse, it is clear that some fairly extensive examinations should optimally be performed upon the victim. These would minimally include a general physical examination, gynaecological examination, where appropriate, developmental assessment, mental health assessment, family assessment, and possibly others, such as indicated laboratory tests, intelligence tests and forensic tests. Since most of the children first presented in the emergency service, it would be expected that a large number of referrals would be made to other services and that these would result in a significant number of follow-up visits.

This was, in fact, the case. Of the 592 children (95.0 per cent) for whom information was available, further medical and/or psychosocial follow-up within the hospital was recommended for 549 (92.7 per cent). The proportion for girls was slightly higher than that for boys which likely reflects the need for a detailed gynaecological assessment for many of the girls.

Recommended Follow-up Care	Males (n=74)		Females (n=549)	
	No.	%	No.	%
Medical/psychosocial follow-up	63	85.1	486	88.5
No follow-up recommended	8	10.8	35	6.4
Not reported, inapplicable	3	4.1	28	5.1

A recommendation that further assessment and care are needed does not ensure that such follow-up will occur or that if no recommendation is made that additional care will be sought. However, among the children surveyed, compliance, at least initially, appeared to be the rule. Of the 549 children for whom follow-up was recommended, information was available for 544, and of these, nine in 10 (89.9 per cent) obtained at least some of the recommended follow-up care.

Patients Receiving Recommended Follow-up Care	Males (n=63)		Females (n=486)	
	No.	%	No.	%
Within hospital	20	31.8	223	45.9
External source	14	22.2	58	11.9
Hospital and external source	23	36.5	151	31.1
None, not reported	6	9.5	54	11.1

Reasons for Follow-up Care

A total of 762 medical and psychological reasons were given concerning the need for the follow-up of 549 children for whom such care had been recommended. Most of the reasons given indicated the need for further assessment, of which over seven in 10 reasons indicated the need for psychosocial evaluation or counselling of the child (Table 31.8). The reasons for follow-up reflect the concerns of the initial examiner. It is likely that in the actual follow-up assessment and provision of care, further recommendations would reflect subsequent findings and the child's and family's progress.

It was recommended that seven boys and 17 girls should be followed up for investigation of sexually transmitted disease. Vaginal swabs were obtained from 305 girls and cervical swabs from 152. While 28 of these young patients (26 girls and two boys) were given a prophylactic medication, no information was listed in the hospital charts concerning whether these were 'confirmed' cases of sexually transmitted disease.

For patients for whom counselling was recommended by the initial examiner (for 248 girls and 36 boys), in some instances a notation was made either of the kind of counsellor being suggested, or of the kind of counselling desired. When the counsellor (or counselling agency) was specified, it was the hospital's abuse team in 80 cases, the child protection agency in 73, a social worker in 38, psychiatrist/psychologist in 38, and a child or adolescent clinic in 33. The types of counselling recommended were: family counselling, 28 cases; counselling in sexuality, sex abuse trauma/rape or birth control, 30 cases; and supportive counselling of parents or victim, 12 cases.

Table 31.8

Reasons Given by Attending Staff for Medical and Psychosocial Follow-up of Sexually Abused Children

Reasons Given for Follow-up	Males (n=63)		Females (n=486)	
	No.	Non-Accum. %	No.	Non-Accum. %
Repair of tears, lacerations	—	—	5	1.3
Abortion	—	—	2	0.4
Sexually transmitted disease	7	11.1	17	3.5
Pregnancy test	—	—	10	2.1
Gynaecological examination	2	3.2	108	22.2
Laboratory tests	2	3.2	27	5.6
Mental health assessment	6	9.5	59	12.1
Social work assessment	23	36.5	210	43.2
Counselling	36	57.1	248	51.0

National Hospital Survey. The gynaecological examination of two males is presumed to be in relation to more extensive examination of genitalia and anus/rectum than that provided on the initial examination.

For two in five (38.8 per cent) children, more than one follow-up service was recommended; this occurred twice as often for girls (41.2 per cent) as for boys (20.6 per cent). It is possible that this difference is accounted for by the initial impressions of physicians who had noted that a higher proportion of girls than boys had displayed symptoms of distress.

External Follow-up Care

Of the 246 children (209 girls and 37 boys) known to have received some of their follow-up care from an external service, the largest single group received that care from a child protection agency (172 cases). The instances of external aid also included: 38 children seen at a social service centre or by a social worker who had previously known the child; 26 seen at another hospital; 12 at a private clinic; 12 by the family physician; and 10 in a group home setting.

Almost half (45.5 per cent) of the reasons cited for recommending that external assistance be provided to children were made to meet legal requirements (e.g., requests by the police, child protection service, court). In a number of other instances, care had been initiated elsewhere, or the source of assistance was closer to the patient's home. In only two in five instances (41.5 per cent) was the source of external care otherwise initiated by hospital staff, i.e., a majority of the external assistance was recommended in order to meet legal requirements, to serve the convenience of patients, or because care had

been previously initiated by another agency. Of the 549 children for whom follow-up care was recommended, only one in five (18.6 per cent) received external assistance that was purposively sought out by hospital staff.

Sources of External Care	Males (n=37)		Females (n=209)	
	No.	Non-Accum. %	No.	Non-Accum. %
Child protection service	27	73.0	145	69.4
Social service/previous social worker	6	16.2	32	15.3
Other hospital	4	10.8	22	10.5
Private clinic	3	8.1	9	4.3
Family physician	2	5.4	10	4.8
Group home	—	—	10	4.8
School social worker/ worker/counsellor	1	2.7	6	2.9
Public health nurse	—	—	4	1.9
Other	—	—	5	2.4

In-hospital Follow-up Care

Of the 549 sexually abused patients for whom follow-up care was recommended, three in four (76.0 per cent) received some or all of their care from the hospitals participating in the survey. Such care was received from a multiplicity of providers, with many children being seen by the staff of more than one service, department or facility. The 417 children who were in some way involved with the hospital for follow-up obtained their care, on average from two services, departments or facilities (2.0).

In-hospital Follow-up Services	Males (n=43)		Females (n=374)	
	No.	Non-Accum. %	No.	Non-Accum. %
Social Service Department	17	39.5	170	45.5
Sexual Abuse Team	22	51.2	152	40.6
Child Protection/Abuse Team	21	48.8	144	38.5
Teen/Adolescent Clinic	4	9.3	113	30.2
Gynaecology	1	2.3	89	24.8
Psychiatry/Psychology	6	14.0	45	12.0
Paediatric Service	3	7.0	16	4.3
Nephrology/Urology	1	2.3	10	2.7
Other (emergency room, family medicine, infectious ward, prenatal clinic, medical outpatient)	4	9.3	22	5.9

Of the children who received outpatient follow-up care in hospital, reports on visits were available for 393. Of these children, 272 (69.2 per cent) made one or two visits each. Another 74 children (18.8 per cent) were seen between three and five times each and 34 had between six and nine visits. Thirteen children were seen at the hospital between 10 and 61 times, suggesting that intensive therapy had been provided.

For most of the physical injuries sustained by the children, redness, swelling, abrasions, bruising and so forth, one or two visits to the hospital would likely suffice to provide adequate care. Testing for the treatment of sexually transmitted diseases might have involved three or four visits. If the child originally presented in the emergency room, arranging gynaecological and psychosocial assessments could itself have involved another one to several visits. For a child involved in incest, or sustaining long-term recurrent abuse, supportive counselling, family therapy and/or individual psychotherapy may be warranted over a period of several months or even years.

Termination of Contact with Hospital

At the end of the period of a year and a half for which findings concerning sexually abused children were obtained in the National Hospital Survey, about one in five patients (18.3 per cent) was still receiving care or services from hospital personnel. Of the four in five children (81.7 per cent) for whom hospital services had been terminated, one in five closures had resulted from a decision made by a patient and his or her family, or the patient's family had moved elsewhere. Patient or family -initiated decisions to terminate receiving hospital services were twice as likely to have been made for female than for male patients. In about one in five cases, the decision to terminate services provided by hospital staff was made either by child protection services or a physician in community practice.

Summary

On the basis of the findings of the National Hospital Survey, it is concluded that:

1. About one in four (23.1 per cent) sexually abused children presented to the hospitals surveyed required medical attention for physical injuries or conditions (not all of which were attributable to sexual abuse).

2. In the judgment of the examining physicians, 2.4 per cent of these patients sustained physical injuries representing long-term harms. The majority of the children were adjudged not to have been physically injured by the sexual abuse, and of those who had been physically harmed, most of the injuries sustained were of a minor nature.

3. On the basis of the mental state assessment of the children, it was found that half (49.4 per cent) had suffered one or more emotional and behavi-

Table 31.9

Termination of Hospital Services for Sexually Abused Children

Status of Case When Survey Conducted	Males		Females	
	No.	%	No.	%
Patient still receiving services	8	10.8	106	19.3
Case closed	66	89.2	443	80.7
Total	74	100.0	549	100.0
Reason Case Closed				
Patient wished no more care (includes patients not reached by hospital, those who did not keep appointments, etc.)	3	4.0	56	10.2
Patients' parents wished no further care (includes prefer other source of care, etc.)	6	8.1	57	10.4
Review of case by hospital protection/ abuse team	11	14.9	39	7.1
Review of case by hospital sexual abuse team	9	12.2	34	6.2
Decision alone of primary examiner (e.g., M.D., social worker)	9	12.2	50	9.1
Decision of primary examiner in consultation with other hospital staff	4	5.4	34	6.2
Child Protection Agency doing follow-up care	6	8.1	66	12.0
Family physician, other hospital or agency doing follow-up	6	8.1	35	6.4
Care no longer necessary — child no longer at risk or considered well	6	8.1	48	8.7
Family moved	—	—	15	2.7
Not reported	6	8.1	9	1.6
TOTAL	66	89.2	443	80.6*

National Hospital Survey.

*rounding error.

oural harms resulting from sexual abuse. In the judgment of the attending professional health workers, about one in six children (17.8 per cent) potentially sustained long-term emotional or behavioural harm attributable to sexual abuse.

4. A majority of sexually abused children (65.9 per cent) initially presented to the emergency service of hospitals. This finding indicates the need for there to be a strong and effective liaison between this service and the specialty services of hospitals whose primary purpose is the care of children and that in this regard special attention should be given to the early identification and treatment of the emotional and behavioural needs of these children.

5. For most of the sexually abused children who presented to hospitals, a majority of their follow-up care was provided by hospital-based personnel, and setting aside referrals required for other purposes (e.g., legally required), only about one in five children was referred to external agencies.

   This finding reflects the common practice, particularly in large tertiary hospitals, to look for help within the hospital complex and to give less attention to the use of alternative facilities in the community that may be more accessible, less structured and formidable, and able to provide a wider range of services to complement those available in the hospital itself.

6. Most of the children appeared to have received a comprehensive examination, but this was not true in all cases. It was found that essential information was often missing about the details of the physical and mental examinations given, the nature of the harms sustained and the services provided.

   The review of the findings indicates the need for the development and use of an examination protocol which would serve as an examination and treatment guideline in the care of sexually abused children.

Accordingly, on the basis of the findings of the National Hospital Survey, **the Committee recommends that the Office of the Commissioner in conjunction with the Department of Justice, the Department of National Health and Welfare, and Provincial Departments of Health and Provincial Departments of the Attorneys-General, establish on a short term basis an interdisciplinary expert advisory committee:**

1. **To develop a standard protocol for the collection of information, examinations to be conducted, findings to be recorded and other necessary procedures.**

2. **To make this protocol widely available, particularly to those likely to have the first contacts (such as paediatricians, family practitioners and the staff of emergency departments), that regular in-service instruction be provided in its appropriate use, and that a reimbursement item be developed for the completion of the protocol.**

The Committee further recommends that the Office of the Commissioner in conjunction with the Department of Justice and the Department of National Health and Welfare fund, directly or by other means, a national research study focussing on injuries to sexually abused children. This research would seek to obtain information on: the efficiency of different clinical programs in providing protection and optimum management for these children; the nature of long-term harms sexually assaulted children experience; and how they can most effectively be prevented, anticipated, detected and treated. The Committee regards this as a priority area for research funding. Investigation should be undertaken in conjunction with major hospitals across Canada specializing in providing treatment for sexually abused children.

While the Committee recognizes that matters relating to the provision of health care fall largely within the jurisdiction of the provinces, it believes that a

national initiative is needed in developing procedures and guidelines for the clinical assessment and treatment of sexually abused children. The Committee is also cognizant of the fact that a number of other legislative and advisory bodies have made somewhat comparable recommendations. The recommendations that the Committee proposes are both feasible and warranted.

The Committee believes that a national initiative along the lines recommended would be one means to strengthen the care and protection of sexually abused children by serving to alert health professionals to the signs of these problems; to indicate the types of examination and procedures it may be appropriate to consider and undertake for these children; to provide a basis for the clear specification of how these children may have been harmed and the follow-up required for their assessment and care by medical and social services; and to develop criteria that are both medically and legally specific in the collection and documentation of evidence.

Chapter 32

Medical Classification of Sexual Assault

Statistical classification systems that accurately identify sexual offences and their resulting injuries are essential to the network of public services affording protection for victims of these crimes. To the extent that these classification systems validly reflect the nature of these acts and the harms incurred, they provide an indispensable means of assessing the extent of this problem, the scope of services provided to victims and the nature, gravity and duration of the harms and risks that are entailed.

During the past century, several different statistical systems have been developed with respect to the classification of deaths, diseases and injuries. The most widely recognized system of classification is the *Manual of the International Statistical Classification of Diseases, Injuries and Causes of Death* (Ninth Revision) adopted by the Twenty-Ninth World Health Assembly of the United Nations.[1] The codes in the *Manual* (I.C.D.-9) have been periodically revised to reflect changes in knowledge about the causes of disease, disability and death.

Since the advent of government-sponsored hospital and medical care insurance programs in Canada, all provinces and territories have established statistical classification systems for the identification of diseases, injuries and deaths or for the payment of services provided by hospitals and physicians. Despite variations in the listing of the codes used in these systems, each includes the full range of services provided; most have adopted the principles of codification which comprise the basis of the *International Classification of Diseases*.

It is on the basis of information assembled by these classification systems for diseases, injuries and deaths that assessments are made concerning the general health of Canadians, the extent of disease and disability in the nation and the need for particular types of services. With respect to sexual offences committed against children, youths and adults, these classification systems are a potential source of significant information about the nature and elements of the sexual acts committed and the physical injuries and emotional harms resulting from these acts.

In undertaking its review of the medical assessment and treatment of sexually abused children, the Committee found little consensus among physicians concerning the recognition and identification of a number of the signs of these conditions. Further, there was a sharp discrepancy between the diagnoses made by physicians with respect to these acts and their codification for the purpose of the statistical classification of diseases and injuries. Because the nosological classification systems are intended to be used to assemble information about diseases, injuries and deaths, there is little differentiation in these codes permitting the specification of diagnoses of different types of assaults committed against persons.

The medical research on child abuse and child sexual abuse undertaken in Canada has not relied on existing disease classification systems as reliable sources of baseline information for the purpose of identifying children who have been victims of these offences. In this chapter, some of the limitations noted by researchers about these systems are reviewed, an assessment is given of the categories established for the codification of sexual acts in the *Manual* of the International Classification of Diseases (Ninth Revision), and findings are presented from the National Hospital Survey on the clinical diagnoses made by physicians and their classification in accordance with the codes in the *Manual*. The Committee received valuable assistance in this regard from the Nosology Reference Centre of Statistics Canada and from the Department of Medical Records of the Hospital for Sick Children (Toronto).

Use of Classification Systems in Medical Research

Few of the Canadian medical research studies on child sexual abuse have relied upon statistical systems for the classification of diagnoses as a principal source of information for the purpose of identifying these types of cases. When this step has been taken, it is typically reported that these sources were incomplete or inappropriate for this purpose; most medical researchers drew directly on listings of child sexual abuse which they had established and had retained separately from the composite statistical classification systems. While this practice is undoubtedly a sound basis upon which to mount research along these lines, the consistent rejection of the classification systems in medical research indicates that these sources have been found to be neither reliable nor valid in providing adequate clinical and statistical information.

Of the main Canadian medical research studies on child abuse and child sexual abuse, only two relied exclusively on cases selected from a hospital's statistical record system. In one of these studies (Nova Scotia Child Abuse Study), a number of participating hospitals had developed special categories for the identification of child abuse.[2] In three of the major research studies, the findings were derived from cases examined or treated by the researchers or their colleagues. In the remainder of the research reports, both means of identifying cases were used, but in each instance, it was noted that the quality of the

information collected directly about patients was more reliable than that which had been derived from the statistical disease classification systems.

That few of the medical researchers who have studied child sexual abuse have relied on disease classification systems as sources of their information is due in part to the fact that when the studies were undertaken, only a few broad categories of child sexual abuse had been assigned in classification systems. In addition, the primary concern of these physicians was to identify, treat and provide protection for the children who were in their care. How these conditions might be clinically identified and subsequently listed were likely to be secondary, if not irrelevant, concerns. In this respect, the Committee knows of no review which has considered, in detail, the medical classification of clinical diagnoses made with respect to sexually assaulted persons (children or adults), or how well these listed categories accord with the full range of sexual acts committed and the types of injuries or harms that patients sustained.

Manual of the International Classification of Diseases

The *Manual of the International Statistical Classification of Diseases, Injuries and Causes of Death* (Ninth Revision, 1975) was developed for worldwide use as a statistical method for the classification of these conditions. The use of this classificatory index has been mandatory since January 1, 1979 across Canada in the classification of causes of death; starting on April 1, 1979, its use was adopted officially by Statistics Canada in relation to published reports for the classification of inpatient hospital morbidity statistics received from provincial hospital insurance programs. Some provincial medical care plans have adapted sections of the *Manual* for purposes of making payments to physicians by using the code at three or four digit levels, depending upon the degree of specificity required.

The *Manual* of the International Classification of Diseases is divided into 17 chapters in which diseases are grouped by type, site or circumstance. In addition to the classification of diseases, the *Manual* contains several supplementary means of classification:

1. The E Code for the identification of external causes of injury and poisoning.
2. The V Code for the identification of factors that may affect the health status of persons or contacts that patients may have with health services.
3. A dual method of classification for certain conditions according to etiology (identified by a dagger) and localized manifestation (identified by an asterisk), e.g., tuberulous meningitis with a dagger code in the chapter for infectious diseases and an asterisk code in the chapter for diseases of the nervous system.

The dagger and asterisk supplementary codes are not used in the classification of different types of sexual behaviour, acts or offences.

The codes listed in the *Manual* are designed to designate in numerical form the reasons why patients contact health services and the cause(s) of death. The codes may be assigned in relation to a patient's condition based on examination and/or treatment for: an emergency visit; outpatient treatment; inpatient admission; or a visit to a physician's office. With respect to how the codes in the *Manual* may be used in relation to these different types of contacts by patients with health services, no consistent practice is adopted across the nation. Likewise, there is no uniform policy with respect to the number of codes that may be assigned to each patient.

The Nosology Reference Centre of Statistics Canada reports that all provincial hospital insurance plans have adopted the *Manual* of the International Classification of Diseases (or an American modification of this system) for purposes of coding inpatient hospital morbidity statistics. In many provinces, this information is submitted for processing to the Hospital Medical Records Institute (H.M.R.I.). In Ontario, it is mandatory that hospitals submit records for day surgery and treatment for statistical processing to the Institute. The Nosology Reference Centre reports, however, that in most provinces there is no classification of the reasons why patients use hospital outpatient services (ambulatory care provided by hospital clinics and hospital emergency room services). In this respect, the procedures adopted by the Hospital for Sick Children are unusual as information on the causes of injuries are collected and coded for outpatients.

The American adaptation of the *Manual*, the I.C.D.-9-C.M. system, is used by several provincial hospital insurance programs. This system introduces greater specificity in the listing of diseases and conditions by using a 5-digit instead of 4-digit code. The *Diagnostic and Statistical Manual of Mental Disorders* (D.S.M.-3) is another system of classification which extends the scope of certain categories given in the *Manual* (I.C.D.-9), particularly with respect to the identification of psychiatric disorders.[3] The D.S.M.-3 system has been adopted by some Canadian hospitals, but its use is not officially recognized by provincial or federal departments of health. As a result, no provincial or national statistics have been assembled drawing upon this source.

Although their numerical codes vary for some items, the categories of the *International Classification of Diseases* and the *Diagnostic and Statistical Manual of Mental Disorders*, as listed in Table 32.1 are generally comparable with respect to the identification of sexual behaviour, sexual diseases and sexual character disorders. The codes listed in Section 302, Sexual Deviations and Disorders, of the *Manual* of the International Statistical Classification of Diseases are used for persons who seek or are provided with medical attention which can be classified by these categories. In instances in which several conditions are grouped together in one code category, retrieval of one of these conditions is impossible by using the code number alone. The existing categories for some conditions could be used as a means of identifying persons who may have committed certain types of sexual assaults, but there is no means whereby the victims of these offences who received medical attention could be identified by the codes given in Section 302.

Table 32.1

Medical Classificaton of Sexual Deviations and Disorders

International Statistical Classification (I.C.D.-9)		Diagnostic & Statistical Manual of Mental Disorders (D.S.M.-3)	
Sexual Deviations & Disorders		**Psychosexual Disorders**	
		Gender Identity Disorders	
302.5	Trans-sexualism	302.5x	Trans-sexualism
302.6	Disorders of psychosexual identity	302.60	Gender identity disorder of childhood
302.6	Disorders of psychosexual identity	302.85	Atypical gender identity disorder
		Paraphilias	
302.8	Other sexual deviations and disorders	302.81	Fetishism
302.3	Transvestism	302.30	Transvestism
302.1	Bestiality	302.10	Zoophilia
302.2	Paedophilia	302.20	Pedophilia
302.4	Exhibitionism	302.40	Exhibitionism
*302.8	Other sexual deviations and disorders	302.82	Voyeurism
302.8	Other sexual deviations and disorders	302.83	Sexual masochism
302.8	Other sexual deviations and disorders	302.84	Sexual sadism
*302.8	Other sexual deviations and disorders	302.90	Atypical paraphilia
		Psychosexual Dysfunctions	
*302.7	Frigidity and impotence	302.71	Inhibited sexual desire
*302.7	Frigidity and impotence	302.72	Inhibited sexual excitement
*302.7	Frigidity and impotence	302.73	Inhibited female orgasm
*302.7	Frigidity and impotence	302.74	Inhibited male orgasm
*306.5	Genitourinary malfunction arising from mental factors	302.75	Premature ejaculation
302.7	Frigidity and impotence	302.76	Functional dyspareunia
306.5	Genitourinary malfunction arising from mental factors	306.51	Functional vaginismus
*302.7	Frigidity and impotence	302.7	Atypical psychosexual dysfunction
		Other Psychosexual Disorders	
302.0	Homosexuality	302.00	Ego-dystonic homosexuality
*302.8	Other sexual deviations and disorders	302.89	Psychosexual disorder not elsewhere classified
**302.9	Unspecified sexual deviations and disorders		

* Not specifically indexed, but judged to fit in this category.

**No equivalent DSM-III category.

In addition to the items listed in Section 302 of the International Classification of Diseases, Chapter XVII classifies the nature of any injuries sustained and the supplementary E Codes classify the external causes of the injuries. In the Ninth Revision of the *Manual*, which is widely used across Canada, there is an E Code to identify that a patient has been a victim of rape, but there are no categories for other types of sexual assault such as incest or acts of vaginal or anal penetration.

The existing codes in the Ninth Revision of the *Manual* could be adapted to permit the identification of the injury which was sustained by the type of act committed and to indicate the identity of the suspected or known perpetrator. A child who had been *raped*, for instance, could be classified in this system according to:

• Nature of injury	e.g., 959.1	
• Plus E Code for rape	E 960.1	
• Plus E Code for child	E 967.0	by parent
• Battering & other maltreatment	E 967.1	by other specified person
	E 967.2	by unspecified person

There is no nature of injury code in this system which identifies that a child has been abused or molested other than the Code for the child maltreatment syndrome (995.5). A child who had been the victim of *incest* could be classified according to:

• Nature of injury	e.g., 959.1	
• Plus E Code for child	E 967.0	by parent
• Battering & maltreatment	E 967.1	other specified person
	E 967.9	by unspecified person

Under the current usage of the I.C.D.-9, cases classified by the E 967 Code would be grouped with victims of physical maltreatment, making retrieval of sexual maltreatment impossible.

The V Code of the Ninth Revision of the *Manual* is used to identify a number of abnormal family circumstances e.g., V61.2, Parent-Child Problems, which includes the seeking or obtaining of care as a result of child abuse. The V Code is not used for the purpose of identifying sexual offences committed against children or adults. This section also excludes the specific identification of maltreated children. Cases of this kind are coded 995.5 (child maltreatment syndrome), which includes: battered baby; and the emotional and/or the nutritional maltreatment of the child.

With respect to the identification of child sexual abuse by the codes listed in the *Manual* of the International Statistical Classification of Diseases, the Committee concluded that:

1. **Except for the E Code which might be adapted for this purpose, the I.C.D.-9 does not permit the identification of events since it is a system developed for the statistical classification of diseases.**

2. **There is no direct means for the identification of the results of most categories of sexual assault, unless injuries had been sustained.**

3. **The adaptation of the existing system, in order to identify victims of sexual assault, would likely prove to be cumbersome, except for specialists in nosology who were expert in using this system.**

4. **The use of the system is limited in practice across Canada to the classification of deaths or the conditions of patients who had been admitted to hospitals. The use of the system has not been extended to include the classification of conditions of patients provided with outpatient hospital services or those who are treated by physicians in private medical practice. Since the Committee's findings show that a majority of sexually assaulted children receiving medical care are not hospital inpatients, most cases of child sexual abuse would still fail to be identified, even if the existing classification system were amended.**

Classification of Medical Diagnoses

In the National Hospital Survey, the diagnoses made by physicians who had examined or treated sexually assaulted children were transcribed, as they had been written in hospital charts, to the research protocols. A total of 65 clinical diagnoses was given with respect to children and youths who were suspected or confirmed to have been sexually abused. With the assistance of the Nosology Reference Centre of Statistics Canada and the Department of Medical Records of the Hospital for Sick Children, these 65 clinical diagnoses were coded using the system set out in the *Manual* of the International Statistical Classification of Diseases (Ninth Revision). In the case of the Hospital for Sick Children, these diagnoses were classified with respect to a supplementary 2-digit code adopted by the Department of Medical Records of the Hospital.

The results of the statistical classification of the 65 clinical diagnoses made by physicians of child sexual abuse are given in Table 32.2. The first column, Diagnoses Given by Attending Physician, lists the diagnoses transcribed directly from patients' charts in the National Hospital Survey. In the second and third columns, the numerical and written classification of these diagnoses is listed in accordance with the Coding Book used by the Hospital for Sick Children. The fourth and fifth columns list a comparable assessment of the physicians' diagnoses provided by the Nosology Reference Centre of Statistics Canada.

Table 32.2

Statistical Classification of Medical Diagnoses given for Suspected/Confirmed Cases of Child Sexual Abuse

Diagnoses Given By Attending Physician	Hospital for Sick Children		Nosology Reference Centre	
	ICD-9 (adapted)	Code Book Classification	ICD-9	Code Book Classification
Abdominal pains	7890	Abdominal pain.	789.0	Abdominal pain.
Alleged physical abuse	9955-01	Battered child syndrome.	995.5 E 967.9	Child maltreatment syndrome; child battering & other maltreatment by unspecified person.
Alleged rape	—	—	V 71.5	Observation following alleged rape or seduction.
Alleged sexual abuse & behavioural problem	—	—	995.5 E 967.9 V 40.9	Child maltreatment syndrome; child maltreatment by unspecified person; unspecified mental & behavioural problems.
Alleged sexual abuse molestation	—	—	995.5 E 967.9	Child maltreatment syndrome; child battering and other maltreatment by unspecified person.
Alleged sexual abuse & skin irritation	—	—	995.5 E 967.9 709.8	Child maltreatment syndrome; child maltreatment by unspecified person; other disorders of skin.
Alleged sexual abuse/urinary tract infection	—	—	995.5 E 967.9 599.0	Child maltreatment syndrome; child maltreatment by unspecified person; urinary tract infection, site not specified.
Alleged sexual abuse & venereal disease	—	—	995.5 E 967.9 099.0	Child maltreatment syndrome; child maltreatment by unspecified person; venereal disease, unspecified.
Alleged sexual assault/venereal disease	—	—	— 099.0	Venereal disease, unspecified.

Table 32.2 (*continued*)

Statistical Classification of Medical Diagnoses given for Suspected/Confirmed Cases of Child Sexual Abuse

Diagnoses Given By Attending Physician	Hospital for Sick Children		Nosology Reference Centre	
	ICD-9 (adapted)	Code Book Classification	ICD-9	Code Book Classification
Alleged sexual assault without penetration	—	—	—	—
Alleged/suspected/possible sexual assault	—	—	—	—
Alleged sexual intercourse with a minor	—	—	—	—
Anxious, distracted	3000	Anxiety/neurosis/reaction	300.0	Anxiety states
Assault	—	—	959.9 E 968.9	Injury NOS, unspecified site assault, unspecified means
Attempted sexual assault	—	—	—	—
Balanitis (urinary tract infection — inflammation)	6071	Balanitis	607.1	Balanoposthitis (inc. Balanitis).
Bruising	9198	Superficial injury	924.9	Contusion, unspecified site.
Corrupting the morals of a child	—	—	—	—
Distress re: home situation	—	—	V 61.9	Family circumstances, unspecified.
Drug overdose	9779	Poisoning, drugs.	977.9	Poisoning, unspecified drug.
Eczema or other skin disease	6918 7099	Infantile eczema/dermatitis. Disease, Skin/subcut. tissue.	692.9 709.9	Eczema NOS. Disorder of skin, unspecified.
Facial trauma	9590	Facial	959.0	Injury NOS, face and neck.
Family patterns of violence and failure	—	—	—	—
Gastritis	5355	Gastritis	535.5	Unspecified gastritis and gastroduodenitis.
Gross indecency/Indecent assault	—	—	—	—

Table 32.2 (*continued*)

Statistical Classification of Medical Diagnoses given for Suspected/Confirmed Cases of Child Sexual Abuse

Diagnoses Given By Attending Physician	Hospital for Sick Children		Nosology Reference Centre	
	ICD-9 (adapted)	Code Book Classification	ICD-9	Code Book Classification
Gynaecologically normal (not indicated if sexually active or not)	—	—	—	—
Hepatitis B and Gonococcal (G.C.) infection	0703 0988-98	Hepatitis B, viral, without hepatic coma. Gonococcal infection.	070.3 098.0	Viral hepatitis B without mention of hepatic coma. Acute gonococcal infection of lower genitourinary tract
History of third party sexual abuse	—	—	—	—
Incest	—	—	—	—
Infection/irritation	1368	Infectious/parasitic disease.	136.9	Infection, unspecified.
Infection & venereal disease	—	—	136.9 099.9	Infection, unspecified; Venereal Disease, unspecified.
Intent to sexually assault	—	—	—	—
Medically healthy child	V719	No disease found.	—	—
Negative behaviour, poor self-image due to sexual abuse	—	—	V 40.3	Other behavioural problems.
No evidence of vaginal penetration	—	—	—	—
Pelvic inflammatory disease (P.I.D.)	6149	Pelvic inflammatory disease.	614.9	Unspecified inflammatory disease of female pelvic organs and tissues.
Perineal bleeding	—	—	624.8	Other non-inflammatory disorders of vulva and perineum.
Perineal trauma	—	—	959.1	Injury NOS, trunk (inc. perineum).
Physical injuries	—	—	959.9	Injury NOS, unspecified site.

Table 32.2 (*continued*)

Statistical Classification of Medical Diagnoses given for Suspected/Confirmed Cases of Child Sexual Abuse

Diagnoses Given By Attending Physician	Hospital for Sick Children		Nosology Reference Centre	
	ICD-9 (adapted)	Code Book Classification	ICD-9	Code Book Classification
Physical & sexual abuse	—	—	995.5 E 967.9	Child maltreatment syndrome; child maltreatment by unspecified person.
Possible sexual molestation by sibling	—	—	—	—
Pregnancy	V222	Pregnant state.	V22.2	Pregnant state NOS.
Questionable whether abuse has occurred	—	—	—	—
Rape	—	—	959.9 E 960.1	Injury NOS, unspecified site. Rape
Reactive behavioural problem	3099-02	Childhood adjustment reaction.	V 40.3	Other behavioural problem.
Second & third degree burns	9490-01	Burn.	949.2 949.3	Burn, unspecified site, 2nd degree. Burn, unspecified site, 3rd degree.
Sexual abuse (Incest)	—	—	995.5 E 967.0 (or .1)	Child maltreatment syndrome; child maltreatment by parent (or by other specified person).
Sexual abuse without penetration, incest.	—	—	995.5 E 967.0 (or .1)	Child maltreatment syndrome; child maltreatment by parent (or by other specified person).
Sexual abuse & urinary incontinence (not related to sexual abuse)	—	—	995.5 E 967.9 788.3	Child maltreatment syndrome; child maltreatment by unspecified person; incontinence of urine.
Sexually active/ intercourse has occurred.	—	—	—	—
Sexual assault	9599-02	Sexual assault.	—	—
Sexual assault/digital penetration only	—	—	—	—

Table 32.2 (*concluded*)

Statistical Classification of Medical Diagnoses given for Suspected/Confirmed Cases of Child Sexual Abuse

Diagnoses Given By Attending Physician	Hospital for Sick Children		Nosology Reference Centre	
	ICD-9 (adapted)	Code Book Classification	ICD-9	Code Book Classification
Sexual assault (Incest)	—	—	—	—
Sexual molestation with penetration	—	—	—	—
Social problems	V629	Social problem.	V 62.9	Other psychosocial circumstances, unspecified.
Subject of lesbian activities	—	—	—	—
Suicide attempt	3009-04	Suicidal attempt.	959.9 E 958.9	Injury NOS, unspecified site suicide and self-inflicted injury, unspecified means.
Suspected sexual abuse	—	—	995.5 E 967.9	Child maltreatment syndrome. Child maltreatment by unspecified person.
Use of psychological defense mechanisms/psychological reaction to abuse	—	—	—	—
UTI	5990-01	UTI.	599.0	Urinary tract infection, site not specified.
Vaginal discharge	6235	Vaginal discharge.	623.5	Leukorrhoea, not specified as infective (inc. vaginal discharge NOS).
Vaginal discharge possible sexual assault	—	—	623.5	Leukorrhoea, not specified as infective (inc. vaginal discharge NOS).
Venereal disease	0999	Venereal disease.	099.0	Venereal disease, unspecified.
Venereal disease unlikely	—	—	V 71.8	Observation for other specified suspected condition.
Vulvovaginitis with hymenal lacerations	6163-03	Vulvovaginitis.	616.1 878.0	Vaginitis and vulvovaginitis. Open wound of vagina, without mention of complication.

The findings indicate that relying upon the coding procedures adopted by the Hospital for Sick Children's system, about two-thirds (64.6 per cent) of the medical diagnoses given in relation to suspected and/or confirmed cases of sexual abuse were not identified for purposes of statistical identification.

A review was undertaken of the 65 medical diagnoses in relation to their confirmation or non-confirmation that a child had been sexually abused. The diagnoses were categorized with respect to whether there was: a *definite* indication of sexual abuse; a *probable* indication of sexual abuse; a *possible* indication of sexual abuse; and *no indication* that the condition identified was likely to be related to an incident of sexual abuse.

Diagnostic Indications of Sexual Abuse	Number of Diagnoses	Diagnoses Identified by Adapted I.C.D.-9/H.S.C.	Proportion of All Diagnoses Identified by Adapted I.C.D.-9/H.S.C.
			(%)
Definite	11	1	9.1
Probable	13	4	30.8
Possible	15	3	20.0
No Indication	26	15	57.7
TOTAL	65	23	35.4

Of the 11 diagnoses made by physicians which provided a *definite* indication that child sexual abuse had occurred, only one (9.1 per cent) was identified by means of the coding procedures used at the Hospital for Sick Children. The proportion of the diagnoses identified by this means rose to 30.8 per cent for diagnoses indicating *probable* incidents of sexual abuse, dropped slightly to 20.0 per cent for diagnoses indicating *possible* incidents of this kind, and accounted for about three in five (57.7 per cent) of the diagnoses in which there was *no indication* of sexual abuse having occurred.

In the fourth and fifth columns of Table 32.2, the results are listed of the classification of the 65 diagnoses undertaken by the Nosology Reference Centre of Statistics Canada. These findings differ from those obtained involving the classification of diagnoses undertaken by the Department of Medical Records of the Hospital for Sick Children. With respect to identifying statistically diseases and conditions, two in three (67.7 per cent) of the 65 diagnoses were coded in relation to the listings given in the *Manual* of the International Statistical Classification of Diseases.

In the review of the 65 diagnoses made by the Nosology Reference Centre, slightly over half (54.5 per cent) of the diagnoses providing a *definite* indication of child sexual abuse were identified by means of the codes in the I.C.D.-9 *Manual*. The proportions of the diagnoses for the remaining three categories of diagnoses were: *probable* indications of sexual abuse, 76.9 per cent; *possible*

Diagnostic Indications of Sexual Abuse	Number of Diagnoses	Diagnoses Identified by I.C.D.-9/N.R.C.	Proportion of All Diagnoses Identified by I.C.D.-9/N.R.C.
			(%)
Definite	11	6	54.5
Probable	13	10	76.9
Possible	15	9	60.0
No Indication	26	19	73.1
TOTAL	65	44	67.7

indication of sexual abuse, 60.0 per cent; and *no indication* of sexual abuse, 73.1 per cent.

While two in three of the 65 diagnoses were statistically coded by the Nosology Reference Centre in relation to the classification of the I.C.D.-9, a number of these listings fell into general categories. For instance, the listing in the I.C.D.-9 Manual of "Abuse, Child" is considered under: Child Maltreatment Syndrome (995.5); and Child Maltreatment by Unspecified Person (E 967.9). No differentiation is made in these categories between physical and sexual abuse. Although the diagnoses providing a definite indication of child sexual abuse may be classified in relation to these codes of the I.C.D.-9, for the purposes of identifying child sexual abuse, much of this information is effectively lost; for certain codes in the *Manual*, no identification of child sexual abuse having been diagnosed can subsequently be retrieved from the diagnostic statistics compiled by this means.

When diagnoses which were classified under general non-specific codes are set aside, and only those for which there was a specific indication of sexual abuse are retained, then about half (49.2 per cent) of the 65 diagnoses are accurately identified with respect to their classification in relation to the I.C.D.-9 *Manual* undertaken by the Nosology Reference Centre. In relation to the four categories of diagnoses, the proportions identified in the revised listing were:

Diagnostic Indications of Sexual Abuse	Number of Diagnoses	Revised Listing of Diagnoses Identified by I.C.D.-9/N.R.C.	Proportion of All Diagnoses Specifically Identified by I.C.D.-9/N.R.C.
			(%)
Definite	11	4	36.4
Probable	13	7	53.8
Possible	15	5	33.3
No Indication	26	16	61.5
TOTAL	65	32	49.2

In the revised listing, of the 11 diagnoses providing a *definite* indication of sexual abuse, about one in three (36.4 per cent) was accurately identified in relation to the I.C.D.-9 classification. The proportions for the other categories were: *probable* indications of sexual abuse, 53.8 per cent; *possible* indications of sexual abuse, 33.3 per cent; and *no indication* of sexual abuse, 65.4 per cent.

The findings from the reviews undertaken by the Department of Medical Records of the Hospital for Sick Children and the Nosology Reference Centre of Statistics Canada indicate that there is a sharp discrepancy between diagnoses made by physicians and how these diagnoses may be subsequently classified for purposes of statistical diagnostic classification. With respect to the intended use of the statistical classification systems, it must be noted that they were developed for the purposes of identifying diseases, injuries and causes of death. However, it is apparent that in this respect, some types of sexual acts and behaviour are identified, while others are omitted or are subsumed within general codes. It is also evident that there is a considerable loss of specific types of information in relation to the identification of certain diagnoses due to their conversion to code numbers representing groups of diagnoses or conditions. There is also a lack of differentiation (in the E Codes, in particular) between physical and sexual abuse.

These findings on the statistical classification of diagnoses obtained in relation to the examination of sexually abused children indicate that the utility of any classification system is contingent upon the quality of the information provided. A number of the diagnoses given by physicians in relation to child sexual abuse lacked specificity with respect to indicating the details of the cases examined.

With respect to the identification of suspected or confirmed instances of child sexual abuse, the basic disease classification system which is widely used (or adapted) across the nation must be considered inadequate, if not invalid.

Virtually none of the major conditions diagnostically identified by physicians in relation to sexual abuse is recognized in the existing statistical codes. These unidentified conditions, include, among others: alleged/confirmed sexual abuse/assault; intercourse with a minor; vaginal and anal penetration; incest; perineal bleeding/trauma; rape; and the touching/fondling of the sexual parts of the body.

Summary

In the Committee's view, having a disease classification system which identifies with reasonable accuracy medically examined cases of suspected and/or confirmed sexual abuse is an essential component of the services required for the protection of victims of these offences. In the absence of such a system, it is not possible to determine the extent of these medically reported conditions and, of greater importance for the well-being of the child, to assess

the physical and emotional harms sustained and their long-term impact on the child's health.

The existing disease classification system provides for the identification of fetishism, pedophilia, exhibitionism, sexual deviation, homosexuality and transsexualism, among others. All of these categories pertain to persons having these attributes or committing these acts. These categories do not permit the identification of persons against whom sexual acts may be committed. It is an anomaly that while certain types of sexual behaviour and disorders are identified, no specific reference is made to persons committing incest or sexual assaults.

The existing classification system for the identification of sexual behavioural and character disorders is a conceptual compost heap which has been added to without sufficient consideration being given to the specification of particular categories or to the sum of its parts. It is inconsistent, for instance, with respect to the inclusion of some categories, but the exclusion of other major types of sexual behaviour. Most of the existing categories are loosely defined and do not permit a reasonably uniform and consistent identification of behaviours and disorders, e.g., pedophilia. In the Committee's view, most of these categories should be dropped and be replaced by a classification system which is inclusive with respect to the identification of the types of sexual acts for which persons may have a predisposition to commit and the acts committed.

The main deficiency of the existing classification systems is that they do not permit the sufficient or complete identification of persons against whom sexual acts are committed and how they may be injured. What is required is a classification system having the capacity to identify accurately:

1. The types of sexual acts committed.
2. The circumstances or events under which the acts were committed (e.g., involving assault).
3. The type of association between the person committing the act and the patient (e.g., incest).
4. The types of physical injuries and emotional harms sustained.

Elsewhere in the Report, the Committee has developed categories for the specific identification of sexual acts, persons committing these acts and the circumstances under which the acts occur. These elements should comprise the basis for the development of a revised classification system.

On the basis of the Committee's review of the clinical medical research dealing with child sexual abuse, it is evident that these sources cannot, as yet, be considered as an adequate system for the identification of the types of medically examined cases of child sexual abuse, nor do they provide sufficiently detailed information about how sexually abused children were injured. With respect to these issues, there is now virtually an informational vacuum in Canada. Neither the widely used systems for the classification of diseases and

conditions nor the body of available clinical medical research provides adequate information concerning the identification of these conditions or the injuries resulting from them.

The Committee recognizes that a review of the *International Classification of Diseases* (Ninth Revision) is being undertaken by the World Health Organization. This review is scheduled to be completed before the end of the 1980s. The Committee believes that the Government should not postpone consideration of the revision of the I.C.D.-9 now being widely used across Canada until the international review has been completed. There is no assurance that the international review will address the concerns identified by the Committee.

The Committee recommends that the Office of the Commissioner in consultation with the provinces, the Department of Justice, the Department of National Health and Welfare and Statistics Canada, appoint an expert advisory committee comprised of experts in nosology, paediatrics and the law to:

1. **Review the codes of the *International Classification of Diseases* (Ninth Revision) in order to determine how these do or do not permit the identification of diagnoses relating to persons, both children and adults, who have been sexually abused.**

2. **Develop a revised classification with respect to the identification of physical injuries and emotional harms associated with sexual assault.**

3. **Enlarge this system with respect to the identification of the events or persons associated with these assaults (e.g., incest), in relation to:**

   (i) **the types of sexual acts committed;**

   (ii) **the circumstances or events under which the acts were committed;**

   (iii) **the type of association between the person committing the act and the patient; and**

   (iv) **review and make recommendations with respect to the identification of sexual abuse within the framework of medical services provided to: hospital outpatients; and patients examined and treated by physicians in private medical practice.**

On the basis of the review and recommendations provided by the expert advisory committee, the Committee recommends further that the Office of the Commissioner in co-operation with the Government of Canada should:

1. **Implement the recommended revisions with respect to the classification by Statistics Canada of hospital morbidity and death statistics.**

2. **Consult with the provinces to review means whereby the classification of medical services provided on an ambulatory basis can be revised to identify statistically persons who have been sexually assaulted and injured.**

3. **Make representation to the international nosological review committee of the World Health Organization with respect to effecting amendments along these lines to be contained in the Tenth Revision of the *International Classification of Diseases.***

References

Chapter 32: Medical Classification of Sexual Assaults

[1] World Health Organization. *Manual of the International Classification of Diseases, Injuries and Causes of Death*. Ninth Revision. Geneva, 1978.

[2] Fraser, F.M., J.P. Anderson and K. Burns, *Child Abuse in Nova Scotia*. Halifax, 1973, pp. 25-27.

[3] American Psychiatric Association. *Diagnostic and Statistical Manual of Mental Disorders*. Third edition. Washington, D.C., 1980.

Chapter 33

Live Births, Therapeutic Abortions and Sexually Transmitted Diseases

An outstanding characteristic of the sexual offences in the *Criminal Code* is the attempt to provide protection by means of prohibitions against sexual intercourse with young females. This no doubt reflects moral concerns, as do other prohibitions against sexual misconduct. However, the prohibitions against sexual intercourse specified in the *Criminal Code* also indicate concern with the consequences for young girls of health risks from pregnancy and sexually transmitted diseases. Although these concerns were expressed almost 60 years ago in the United Kingdom *Report of the Departmental Committee on Sexual Offences Against Young Persons*,[1] comprehensive information on these health risks has yet to be obtained.

The findings presented in this chapter draw upon official national statistics concerning live births and therapeutic abortions of young Canadian females. In relation to sexually transmitted diseases contracted by children and youths, the Committee was provided with national statistics by the Bureau of Epidemiology of the Department of National Health and Welfare. The Manitoba Department of Health, Sexually Transmitted Disease Control Program, made findings available to the Committee concerning reported cases for 1980 and 1981 involving children who were age 16 and younger.

Live Births

The 1925 United Kingdom *Report of the Departmental Committee on Sexual Offences Against Young Persons* noted that:

> "Another argument which impresses us is the physical injury to a girl of 15 or younger who gives birth to a child. Whether she consents or not, modern legislation and public opinion desire to make her interest paramount."[2]

This argument was advanced in support of a recommendation for an absolute prohibition against sexual intercourse with a girl under 16. At the time, there was no question of performing a legal abortion. Today, females 15 or younger who become pregnant are recognized to be in a high risk category and

require specialized care and attention. They are subject to greater hazards at different trimesters of pregnancy. They are likely to deliver prematurely and to have babies who are also likely to be in a high risk category.

There is a substantial number of these hazardous pregnancies in Canada.[3] In 1981, there was one live birth to an 11 year-old, one to a 12 year-old, 35 to 13 year-olds, 231 to 14 year-olds, 938 to 15 year-olds and 2,749 to 16 year-olds. Of the 268 live births to females under 15 years, four were second births, and of the 938 live births to 15 year-olds, 17 were second births. Most of the 268 live births to females under 15 years (97.6 per cent) were to single women. For purposes of comparison, 59.2 per cent of the 29,062 live births to females 15 to 19 years were to single women.

Therapeutic Abortions

The *Criminal Code* was amended in 1969 to permit therapeutic abortions to be performed in certain circumstances. In 1981, 10 twelve year-olds, 84 thirteen year-olds and 450 fourteen year-olds had their pregnancies terminated. One of the 14 year-olds had one previous delivery. In addition, 1,262 fifteen year-olds had their pregnancies terminated. Fourteen of these cases had one previous delivery. For purposes of comparison, 2,850 sixteen years-olds had their pregnancies terminated. Of these, 65 had a previous delivery and one had two previous deliveries. Most of the 15 year-olds (99.6 per cent) and 16 year-olds (99.2 per cent) were unmarried.[4] The average therapeutic abortion rate per 100 live births for females between 15 and 17 from 1974 to 1981 was 4.5 times the average rate for all ages. For females under 15, the therapeutic abortion rates for the same period were between 3.2 (1974) and 2.3 (1981) times the rates for those between 15 and 17 (average 2.6).[5]

Table 33.1 shows that the proportion of pregnant females having therapeutic abortions in the first trimester in 1981 varied from 76.6 per cent of those under 14 to 82.6 per cent of those 18 and 19. At the same time, the proportion having abortions from 13-20 weeks' gestation varied from 23.4 per cent of those under 14 to 17.2 per cent of those 18 and 19. The most important fact here is that more than three-quarters of teenage girls and those even younger having therapeutic abortions had had them during the first trimester. However, there is also a slight gradual rise in the proportion of earlier abortions from 14 to 19 years, with a corresponding slight gradual decrease in the proportion of later abortions.[6]

The proportion of females under 15 years having complications associated with a therapeutic abortion is almost double that for females of all ages at all stages of gestation. The complication rates per 100 therapeutic abortions for females under 15 years is 25 per cent higher than for those 15-19 years of age, and almost twice as high as for those 20-24 years of age.[7] Abortion complications for girls under age 15 included: haemorrhage; laceration of the cervix; perforation of the uterus; and retained products of conception. Infection was an additional complication with those 15-19 years.[8] Later complications may

Table 33.1

Therapeutic Abortions among Females under Age 20 by Weeks of Gestation, Canada, 1981

Weeks of Gestation	Under 14 Years (n=94)	14–15 Years (n=1 712)	16–17 Years (n=6 662)	18–19 Years (n=9 801)
	Per Cent	Per Cent	Per Cent	Per Cent
Under 9 weeks	19.2	18.4	17.5	19.5
9 – 12 weeks	57.4	59.9	61.9	63.1
13 – 16 weeks	18.1	14.9	14.5	12.7
17 – 20 weeks	5.3	6.1	5.9	4.5
21 weeks and over	—	0.7	0.2	0.2
TOTAL	100.0	100.0	100.0	100.0

Canada. Statistics Canada. *Therapeutic Abortions 1981*, Ottawa: Supply and Services Canada, 1983, based on Table 26, p. 79.

include: infertility and tubal pregnancies secondary to tubal adhesions or to partial or complete obstruction after infection; and premature delivery in subsequent pregnancies which may be related to the laceration of the cervix and the later inability of the uterus to retain an increasing mass of a normally developing pregnancy. The abortion complication cases from 1974 to 1981 as a proportion of the total abortion cases for the period show a general decrease for all ages. However, the figure for females under 15 years is always the highest, followed by the figure for those 15 to 19 years-old. In the former case, it was 9.3 per cent in 1974 and 4.4 per cent in 1981. In the latter, it was 4.1 per cent in 1974 and 3.3 per cent in 1981. For purposes of comparison, the proportion for females 20-24 years-old was 2.8 in 1974 and 2.3 in 1981.[9]

The 1977 *Report of the Committee on the Operation of the Abortion Law* found that "the contraceptive practices of young and single females made them a high-risk group in terms of becoming pregnant".[10] Females 15 and younger who become pregnant are considered to be in a high risk category. Therapeutic abortions performed on young girls carry a higher than normal risk of complications at all stages of gestation and pregnancy subjects young girls to substantial risk of harm. The enactment of the legislation proposed by *Bill C-53* and the *Working Paper* would have significant implications for pregnancy and the resulting risk of harm. Removing the criminal law prohibition against sexual intercourse with young girls from substantial proportions of their partners who are close in age would do nothing to protect the girls against the physical risks of pregnancy.

Sexually Transmitted Diseases

Provincial and Territorial governments recognize the importance of providing protection against the spread of sexually transmitted disease through a system of public health statutes and regulations which require the reporting and treatment of cases of venereal disease. These provisions encourage accurate diagnosis and appropriate treatment; however, it would appear that in a great many cases where treatment is given for sexually transmitted disease, there is no reporting and no follow-up to prevent the further spread of the disease to other persons.

The medical philosophy that has emerged in recent years appears to be directed towards treating individual cases as symptoms and signs without necessarily confirming the diagnosis and tracing and treating the patients' contacts. This philosophy is buttressed by what has become a general concern for confidentiality, so that it is common for physicians not to report these conditions. Indeed, there is a reluctance to record a specific diagnosis of a venereal disease.[11] The result is that the public health objectives supported by the statutes and regulations are not as actively pursued, although current outbreaks of diseases, such as Acquired Immune Deficiency Syndrome, are drawing attention again to the importance of public health protection. The Committee believes that failure to improve and enforce the provisions of the public health laws deprives children and youths of an important protective mechanism against the health consequences of these diseases.

In order to assess the extent to which children who had been sexually assaulted were at risk of contracting a sexually transmitted disease, the Committee sought to obtain this type of information in each of the national surveys in which it appeared feasible that such findings might be identified. The Committee was assisted in this review by the Bureau of Epidemiology of the Department of National Health and Welfare, which provided national statistics on the reported distribution of gonococcal infections and which listed provincial programs in which existing reporting procedures identified higher rates for these diseases than other provinces.

In this respect, the Committee received valuable assistance from: Social Hygiene Services of the Alberta Department of Social Services and Community Health; and the Manitoba Department of Health, Sexually Transmitted Disease Control Division. On behalf of the Committee, the latter Program assembled information on all children who were age 16 years and younger for 1980 and 1981 in relation to cases examined and/or treated by physicians and agencies reporting notifiable cases to the Control service. The unique information presented in this chapter was made possible by the recording practices of the Manitoba STD Control Program which operates in accordance with the terms of the public health law. No names were identified in the information provided to the Committee, yet the importance of this information for monitoring the effectiveness of laws for the protection of children and youths is obvious in relation to the significant findings obtained.

In presenting these findings, the Committee recognizes that the children and youths for whom this information is given are not representative of all children who have been victims of sexually transmitted disease. In addition to the difficulties involved in obtaining information about children who have been sexually assaulted, attempting to ascertain whether they may have contracted a venereal disease requires lifting the veil on an issue about which there is an equal, if not greater, social stigma. For these reasons, there appear to have been few attempts made to obtain such information, and the cases that are known are generally believed to comprise a small fraction of the actual prevalence.

Nosology

The term, "venereal disease", which more recently has been referred to by the phrase, "sexually transmitted diseases", includes a number of different infectious diseases acquired by sexual intercourse and other sexual acts. The term 'sexually transmitted disease', or as it is known in Europe, 'sexually transmissible diseases', includes the full listing of the following conditions.

1. Syphilis, caused by Treponema pallidum
2. Gonorrhea, caused by Neisseria gonorrheae
3. Chancroid, caused by Haemophilus ducreyi
4. Lymphogranuloma venereum caused by Chlamydia trachomatis serotypes L1, L2 and L3
5. Granuloma inguinale, caused by Calymmatobacterium granulomatis
6. Nongonococcal urethritis, cervicitis and vaginitis for which there are a number of agents including Chlamydia trachomatis, Ureaplasma urealyticum and Gardnerella vaginalis
7. Trichomoniasis caused by Trichomonas vaginitis
8. Genital herpes infection, caused by Herpes virus hominis, Types I and II
9. Opthalmia Neonatorum caused by Chlamydia trachomatis. This is a purulent eye disease in infants.

In addition to these conditions, there are many other forms of sexually transmitted diseases. Male homosexuals, for instance, may transmit a group of gastrointestinal maladies, including amoebiasis, giardiasis, parasitic worms, shigellosis and salmonellosis. The recently discovered disease, AIDS (Acquired Immune Deficiency Syndrome), is also found in some homosexual or bisexual males and in their sexual partners. The etiological agent for this disease has not been identified.

The etiology, or the factors that are known or suspected to cause these diseases, varies in relation to each condition. Gonorrhea, for instance, is caused by the gonococcus, Neisseria gonorrheae, and spread by sexual contact. Some women are asymptomatic carriers of the organisms. Asymptomatic infection is

also found in some homosexual men, especially in the oropharynx and rectum. The usual incubation period in both sexes is between two and seven days. There is pain in the urethra and burning on urination, with frequency of urination and a purulent yellowish green discharge. The associated complications resulting from this disease include chronic urethral inflammation, epididymitis and, at a late or chronic stage, orchitis. There may be abscesses around the urethra and prostate, with subsequent urethral strictures and fistulae.

In women, symptoms of gonococcal infection are often absent or frequently so mild as to pass unnoticed. If sought, cervicitis, and occasionally urethritis, may be found. The most serious complication is salpingitis, occurring frequently in women under the age of 25, including small girls. Abdominal pain of variable intensity is present and accompanied by fever. Tubal and pelvic abscesses may occur. The resulting scarring of the fallopian tubes may result in infertility or ectopic pregnancy. Gonorrhea may also cause serious infections of the eye, especially in newborns which, if not prevented or inadequately treated, may result in blindness.

Disseminated gonococcal infection spreading throughout the whole body with joint pains may be a considerable diagnostic challenge. Gonococcal arthritis is more common in women than in men. The onset is acute, usually occurring in one joint, which is severely painful with fever. All forms of gonorrhea can be adequately treated with appropriate antibiotic drugs. The prevalence of penicillin-resistant gonorrhea is becoming more common all over the world.

Medical Classification

The *International Classification of Diseases* (Ninth Revision) identifies diseases numerically and by title, and groups these diseases into a number of broad types of conditions. One of these categories, Infective and Parasitic Diseases, lists those conditions that are generally recognized as being communicable or transmissible, and within this category, the numerical identification is given for sexually transmitted diseases.

A number of different codes may be used with respect to the different manifestations of syphilis and gonorrhea. From a perspective of prevention, emphasis is warranted on those diseases which can be transmitted between persons. With respect to non-gonococcal urethritis, cervicitis and vaginitis, it is now more feasible than it was a few years ago to make more accurate diagnoses in terms of the agents involved. For certain conditions which are believed to be more prevalent now than in the past (e.g., herpes and chlamydia), a more complete and detailed listing is required for the specific identification of these conditions.

In the Committee's judgment, consideration is warranted in relation to the development of a consolidated and distinctive classificatory grouping that brings together all types of sexually transmitted diseases.

Types of Conditions	International Statistical Classification 9th Revision 1975
The Traditional Venereal Diseases	
• Syphilis	090-097
• Gonorrhea	098 (and others)
• Chancroid	099.0
• Lymphagranuloma venereum	099.1
• Granuloma inguinale	099.2
Conditions Formerly Grouped Together as Non-gonococcal Urethritis (NGU and Non-gonococcal Cervicitis & Vaginitis	099.4
• Chlamydia urethritis (& cervico-vaginitis)	
• Mycoplasma urethritis (& vaginitis)	
• Corynebacterim vaginitis (& urethritis)	
• Non-specific urethritis	
• Non-specific vaginitis	
• Trichomoniasis	131.0 (and others)
• Vulvovaginal candidiasis	112.1
Other Sexually Transmitted Diseases	
• Venereal Warts (Condylomata accuminata)	078.1
• Molluscum contagiosum	078.0
• Genital herpes infection	054.1
• Crab lice infestation	132.2
• Scabies	133.0
• Hepatitis A	070.1
• Hepatitis B	070.3
• Genital Group B streptococcal infection: — Amoebiasis	006.9
— Shigellosis	004.9
• Genital cytomegalic infection	078.5
• Reiters Disease	099.3

Section 253 of the Criminal Code provides:

> 253. (1) Every one who, having venereal disease in a communicable form, communicates it to another person is guilty of an offence punishable on summary conviction.
>
> (2) No person shall be convicted of an offence under this section where he proves that he had reasonable grounds to believe and did believe that he did not have venereal disease in a communicable form at the time the offence is alleged to have been committed.
>
> (3) No person shall be convicted of an offence under this section upon the evidence of only one witness, unless the evidence of that witness is corroborated in a material particular by evidence that implicates the accused.
>
> (4) For the purposes of this section, "venereal disease" means syphilis, gonorrhea or soft chancre.

Section 253 was first enacted, in somewhat different terms, in 1919.[12] The section then created a new criminal offence in Canada, as it had been decided

in the late nineteenth century that the communication of venereal disease was not an offence at common law.[13] The restrictive definition of "venereal disease" in the current section 253 has remained unchanged since its original inclusion in 1919.

The only reported legal decision in Canada concerning this offence[14] is the 1926 case of *R. v. Leaf*.[15] The accused was charged and convicted of manslaughter, on the basis that he communicated venereal disease to a woman who subsequently died as a result. According to medical evidence adduced at trial, the woman's death was directly attributable to the venereal disease communicated to her by the accused. On appeal, the accused's sentence of four years' imprisonment was reduced to 12 months' imprisonment, with hard labour.

With respect to the elements specified in the section 253 offence, it appears on clinical grounds that a considerable proportion of persons having these diseases may in fact be unaware that they are infected. In many instances, either information is not volunteered by patients concerning the identities of their partners or, where this information is known, it is not listed in clinical records. According to the communicable disease specialists consulted by the Committee, the major obstacle in identifying sexually transmitted diseases is the persistent reluctance by physicians to report these cases and, in many instances, the provision of treatment without the benefit of laboratory examination of specimen cultures. These practices have become so widespread that the enforcement of section 253 of the *Criminal Code* has effectively ceased.

Because this statute is ineffective in affording protection either for children and youths or adults, the Committee recommends that it be repealed. In the following sections of this chapter, steps are recommended which we believe are warranted to provide better protection in this regard for children, youths and adults.

National Statistics

National statistics on the incidence and prevalence of sexually transmitted diseases are assembled by the Bureau of Epidemiology of the National Department of Health and Welfare from reports on these conditions provided by provincial infectious disease services. While the Committee did not undertake a review of the organization of these provincial programs or of the various procedures followed in the identification and treatment of persons having these diseases, it is generally recognized by experts in this field that there are considerable variations across the country. Due to differences in how the provincial programs are structured and operated, sharply contrasting provincial rates of identification of these diseases are officially reported. There is no reason to suspect that these disparities in the reported rates are due to provincial variations in the actual distribution of sexually transmitted diseases.

Table 33.2

Reported Gonococcal Infections in Children and Youths: Canada, 1980

Province	Rates Per 100,000					
	Males			Females		
	0–4 Yrs.	5–9 Yrs.	10–14 Yrs.	0–4 Yrs.	5–9 Yrs.	10–14 Yrs.
Newfoundland	0.0	0.0	9.2	0.0	3.5	9.6
Prince Edward Island	—	—	—	—	—	—
Nova Scotia	—	—	—	—	—	—
New Brunswick	0.0	0.0	0.0	3.7	0.0	0.0
Quebec	2.9	0.0	2.0	3.0	1.4	5.0
Ontario	1.6	0.0	2.8	2.0	1.0	10.2
Manitoba	2.4	4.8	16.5	17.9	5.1	86.2
Saskatchewan	0.0	0.0	9.5	5.0	2.6	25.0
Alberta	1.1	1.2	11.3	11.4	14.7	61.5
British Columbia	2.0	1.0	1.9	3.3	4.4	22.2
Yukon	0.0	0.0	111.1	1,000.0	0.0	125.0
Northwest Territories	0.0	83.3	40.0	793.1	333.3	960.0

Bureau of Epidemiology, Department of National Health and Welfare

The national statistics given in Table 33.2 on the reported prevalence of gonococcal infections in children and youths for 1980 show how few cases of these conditions are reported officially and sharp provincial variations in these rates. In 1980, in Canada, a total of 340 cases of gonococcal infections was reported for children who were age 14 or younger. Of this total, 17.3 per cent were boys and 82.6 per cent were girls. For children of both sexes, the reported occurrence rose sharply with age.

Age	Number of Reported Gonococcal Infections in Canada, 1980	
	Boys	Girls
0 – 4 years	10	54
5 – 9 years	6	34
10 – 14 years	43	193

In Table 33.2, the 340 cases of gonococcal infections for children 14 years and under are given as rates per 100,000 persons (age specific) for the population. These results show that the provincial rates vary, in some instances by as much as several thousand per cent.

Notifiable and Non-notifiable Infections

On the basis of its review and as documented in Tables 33.3 and 33.4, the Committee concluded that present provincial regulations and statutes concerning venereal disease control are inadequate. Only two of the diseases currently listed, syphilis and gonorrhea, are of serious public health significance, while others (see Table 33.4) are not considered (e.g., non-gonococcal urethritis and genital infections, genital herpes and certain complications of these such as neo-natal herpes).

Table 33.3

Notifiable Sexually Transmitted Diseases: Canada, 1984

Reported by	Disease
All provinces	Chancroid Gonococcal Ophthalmia Neonatorum Gonococcal Infections
New Brunswick Nova Scotia	Granuloma Inguinale Lymphogranuloma Inguinale
Prince Edward Island	Gonorrhea, Genito-Urinary Gonococcal Ophthalmia

Bureau of Epidemiology, Department of National Health and Welfare

Table 33.4

Non-notifiable Sexually Transmissible Infections of Public Health Importance: Canada, 1984

Notifiable in All Provinces, and Nationally, But Not Identified as "Sexually Transmitted"
• Non-gonococcal Urethritis/Cervicitis • Trichomoniasis • Moniliasis • Genital Warts • Hepatitis
Notifiable in British Columbia, Alberta, Ontario and Quebec, not Nationally
• Acquired Immunodeficiency Syndrome
Also Transmitted by Non-Sexual Modes
• Herpes Genitalis • Neonatal Herpes • Hepatitis • Acquired Immunodeficiency Syndrome

Bureau of Epidemiology, Department of National Health and Welfare

In order to obtain a better estimate of the actual occurrence of sexually transmitted diseases in Canada, the Committee recommends that the Office of the Commissioner in conjunction with federal and provincial health authorities establish an interdisciplinary advisory committee in order to develop surveillance and diagnostic criteria for all sexually transmitted infections. Once this list has been established, the diseases listed should be made reportable under the Provincial Acts and Regulations. The support of the Provincial Colleges of Physicians and their equivalents in each province should be actively sought to ensure compliance in reporting.

The maintenance of absolute confidentiality for infected individuals threatens the objectives of communicable disease control and prevention. These strategies form the bases of interrupting the continuing transmission of infection in Canadian society. They have fallen into disuse and should be reinstated and reinforced. It is possible to maintain relative confidentiality, while ensuring protection for all individuals. The application of this recommendation is of particular importance in the control of infection in children and youths, as well as in adults. The intention of this recommendation is to protect the rights of children and youths to receive treatment in situations where they may be unaware of the serious threat to their health and personal well-being.

National Surveys

In several of the national surveys undertaken by the Committee, information was sought about the experience of sexually assaulted children who may have contracted a sexually transmitted disease as a result of the acts committed against them. The nature of the information obtained varied greatly in reliability and in the identification of the specific types of sexually transmitted diseases that may have been contracted.

In the National Population Survey, a random sample of persons was asked whether, as a result of having been sexually attacked, they had been hurt. In the listing of injuries, an item was included specifying: "got VD (sexual disease)". The results given in response to this question may not reflect the true occurrence of the number of these diseases that resulted from incidents of sexual assault, particularly for those conditions which may not have been recognized or detected. The information from this survey is valid, however, to the extent that it reveals whether persons who participated in the survey believed or knew that they had had a sexually transmitted disease, and whether they believed that the infection had resulted from their having been sexually assaulted.

In the case of similar information obtained in the other national surveys, it is recognized that the determination of whether these diseases had been contracted is limited by the timing and nature of the interventions that these services provided with respect to sexually assaulted children. In many of the cases investigated by the police, the information listed in the general occurrence

records of their investigations did not contain long-term follow-up information about these children and youths. If a child had contracted a venereal disease and had received medical treatment for this condition some time after the police had completed their investigation, these findings would not usually have been included in police files unless an investigation was still in progress.

The same problem is evident in the records of child sexual abuse maintained by child protection services. Generally, as noted in Chapter 28, *Provision of Child Protection Services*, the records of these agencies do not record detailed information about the findings of medical examinations of these children. Further, as in the instance of police files relating to sexually assaulted children, the incorporation of information about whether children had contracted sexually transmitted diseases depends upon when a child protection worker was in contact with a child in relation to when the assault occurred, and whether, during the time the case was still open in the files of an agency, if a medical examination had been undertaken.

The most reliable information about the nature of the sexually transmitted diseases contracted by sexually assaulted children was obtained in the National Hospital Survey. A limitation of these results is that relatively few such cases were reported in the National Hospital Survey and that there was no longitudinal follow-up concerning the long-term harms sustained. As the findings of the other national surveys show, only a small proportion of children who were sexually assaulted subsequently sought or received medical attention, and of this number, only a portion obtained such treatment as inpatients at a hospital.

National Population Survey

The information on sexually transmitted diseases obtained in the National Population Survey, although the questions asked were limited in scope, is the first study of its kind for Canada that has sought to document the experience in this regard of a national sample of the Canadian population. While the findings obtained identify only a small number of cases of venereal disease resulting from sexual assault, if these results are projected to the Canadian population, then a sizeable number of persons, both children and adults, may have been involved in episodes of this kind, and as a result, may have contracted sexually transmitted diseases.

In the Committee's view, the significance of the findings obtained derives less from the actual number of cases identified than from the implications of these results for the need to undertake more comprehensive and detailed community surveys of these conditions, particularly since it is known that some types of undetected sexually transmitted diseases may result in long-term harms to the health of persons later in their lives.

A total of 38 out of 1006 females in the National Population Survey reported that they had been raped; of this number, five indicated that they had contracted a sexually transmitted infection (13.2 per cent). None of the

females who were 15 years-old or younger when the incidents had occurred said that she had contracted a venereal disease as a result of having been raped. Of the five cases in which this had happened, two females were between 16 and 17 years of age, one was under age 20 and two were adults. In these instances, because females are usually asymptomatic, it is unknown whether the infection may have been present for some time before the assault occurred, or had been transmitted by the assailant.

Of the 1002 males who participated in the National Population Survey, six reported that they had been victims of having a penis forced into their anus. In two of these incidents, both involving males who were 15 years-old or younger when the incidents had occurred, a sexually transmitted infection was reported to have been contracted.

The results of the National Population Survey show that 3.8 per cent of all females said that they had been raped, and one in 201 had been raped and had subsequently reported having contracted a sexually transmitted disease. Of the males in this survey, 0.6 per cent had been victims of an act of buggery, and of 1002 males, one in 501 had been a victim of this offence and had reported having contracted a sexually transmitted infection. When these proportions are prorated to the Canadian population, and assuming the validity of these findings, then a total of approximately 80,000 persons would be estimated to have contracted a venereal disease resulting from a sexual assault. Observations of this kind must be interpreted cautiously, for they are based on the experience of a small number of cases for which no medical confirmation is available. The findings, however, are based on the results of a representative sample of the Canadian population and, because of the asymptomatic nature of some of these conditions, the results are likely to represent an under-estimate rather than an over-estimate of actual occurrence.

As previously noted, certain types of sexually transmitted diseases may result in serious and long-term harms to the health of persons later in their lives. Not only do these diseases entail great misfortune and personal anguish for some patients but, to the extent that they remain undetected, a pragmatic concern is the considerable public costs which may be incurred in the treatment of the resulting complications. In this regard, the widespread practice of non-reporting to protect confidentiality has served to mask the extent to which children and youths are at medical risk.

Because of the extent of the sexual behaviour of Canadian boys and girls, a sizeable but unknown proportion is likely to contract sexually transmitted diseases. **In light of the potential complications or disabilities that these early contacts may entail for the future health of these children and youths, it is imperative, in the Committee's judgment, that more comprehensive and detailed information be obtained with respect to: the knowledge by children and youths about the signs of sexually transmitted diseases; the number, age and sex of children and youths who report that they have contracted these infections, and the age and sex of their partners; the steps taken to seek and**

obtain pertinent medical attention; and the identification of long-term harms resulting from these diseases.

National Police Force Survey

In the National Police Force Survey, of girls who were 15 years-old or younger and who had been raped or who had been the victims of attempted rape, 15 were reported to have had vaginitis and eight had contracted gonorrhea. If these conditions are grouped together, then 3.8 per cent of these girls had contracted a sexually transmitted disease, some of whom had contracted gonorrhea (1.3 per cent).

A total of 91 cases of attempted buggery and buggery against boys who were 15 years-old or younger was reported in the National Police Force Survey. Of this number, five cases (5.5 per cent) were reported to have had an infected rectum.

National Hospital Survey

In this survey, a total of 549 female patients presented to hospital, of whom 413 received a gynaecological examination. Of this group, 43 (10.4 per cent) were considered to have contracted a sexually transmitted disease and 17 were referred for a further follow-up assessment. Of the 74 male patients for whom information was obtained, seven (9.5 per cent) were referred for a follow-up assessment in relation to a sexually transmitted disease.

Manitoba Study of Sexually Transmitted Diseases

On the basis of the information obtained concerning national statistics on the reported prevalence of sexually transmitted diseases, the senior officials who were responsible for the programs established to control these diseases in Manitoba and Alberta were contacted by the Committee. In the case of both programs, considerable effort has been made to develop special programs and means of liaison to identify and serve children who may be at risk of contracting these diseases. In Manitoba, for instance, close co-operation has been established with child protection services, and as a result of the several special measures taken, larger numbers of children having these diseases are identified. As a result of the way in which information was retained about persons treated, it was not feasible with respect to cases known to Alberta Social Hygiene Services to assemble information about the ages of children who had contracted these diseases with information pertaining to the ages of their suspected or known partners. As information of this type could be assembled by the Manitoba Department of Health, Sexually Transmitted Disease Control Division, a collaborative review by this Service and the Committee was undertaken

of the reported cases of sexually transmitted diseases contracted by children in 1980 and 1981.

In order to ensure confidentiality and accuracy in handling the case records of children for whom information had been obtained, a statistical profile was assembled of each case by the Control Division. This information was given to the Committee for statistical analysis. Provision was made in the profile for information, where available, on:

1. Age of the patient;
2. Sex of the patient;
3. Age of suspected/known partner;
4. Sex of suspected/known partner;
5. Association of patient and partner (e.g., family member, relative, friend, acquaintance, stranger);
6. Source of reporting of case (e.g., self-referral, community physician, clinic/hospital, police or community agency referral);
7. Type of sexually transmitted disease (diagnosis);
8. Number of known sexual partners;
9. Information on examination of sexual partner;
10. Types of treatment provided;
11. Notifications that were made (e.g., parents, family physician, clinic/hospital, police and/or community agency);
12. Whether the disease had been contracted as a result of a sexual assault of the child.

Presenting Symptoms and Treatment

The Manitoba Department of Health survey of sexually transmitted diseases among children and youths identified 452 children with these conditions who were age 16 or younger. About four in five (79.6 per cent) patients were girls and the remainder (20.4 per cent) were boys. When the types of sexually transmitted diseases from which these children suffered are considered, for 15 girls under age 10, confirmation was made by a positive culture of *N. gonorrheae* (14 cases) and in one instance, by a positive smear. In two of these cases, girls under 12 months-old were involved; the cultures obtained from them were non-genital specimens (one ear, one conjunctiva), suggesting that these conditions resulted from nonsexual transmission of infection. The mother of one of these female infants was positive on culture, while the mother of the other child yielded a negative result.

Of the three boys who were under age 10, no information was available about the sex partners of two of these patients. In the two cases in which the identity of the partner was known, both had positive smears for *N. gonorrheae*: the patients were ages five (female) and 12 (male) respectively.

There were six cases in which gonococcal infections appear to have been contracted as a result of male homosexual contacts. The ages of the six boys

were: age nine (one); age 13 (one); and age 16 (four). One 16 year-old boy was bisexual, having had five male and two female sexual contacts. All of the other boys were reported to have had a single male partner. The 16 year-old bisexual patient had been treated twice during 1980-81. In the first examination, the infection was confirmed by urethral culture, and in the second examination, a pharyngeal culture was obtained. This patient's sexual partners were reported to be: males aged 16 (two), 19 and 29 years; and two females who were age 18. Confirmation of a gonococcal infection for the five boys who were reported to have had only one sexual partner was obtained by positive cultures for four cases and by positive microscopy in another. The ages of their partners were: 12 (a relative), 18, 21 and 22. The age of one partner was not reported.

Pelvic inflammatory disease is the most serious complication resulting from gonorrhea among young females. Because the major symptom of this condition is a form of abdominal pain which resembles other abdominal infections, the clinical identification of this disease may be difficult to make. Among the girls who were examined in the 1980-81 Manitoba study, a diagnosis was given for 229 patients (e.g., vaginal discharge, abdominal pain,pelvic inflammatory disease) or a method or place of diagnosis listed (e.g., type of contact, hospital, screening or follow-up). In 15 cases, a diagnosis of pelvic inflammatory disease was made. In addition to these cases, there were 14 patients who had "abdominal pain", a condition which may also have been a pelvic inflammatory disease. Without additional clinical information for these cases, no confirmation can be made. A review of the information about other patients suggests that in addition to the 29 cases noted, there may have been 25 more cases in which a pelvic inflammatory disease was suspected.

On the basis of the available information, it appears reasonable to conclude that about one in four female patients for whom a diagnosis was given in the Manitoba study had or was likely to have had pelvic inflammatory disease. These results cannot be generalized to the experience of all young Canadian girls and women who may have these diseases. However, if only a small fraction of these diseases were to occur, as indicated by the findings of the National Population Survey, then a sizeable number of Canadian females may be at considerable risk of complications resulting from these infections.

The prognosis for these young girls is unfortunate and bleak. Clinical experience indicates that further consequences are likely to include:

- **Between 15 and 20 per cent will experience infertility in later life, a condition that may entail multiple hospital admissions and possible surgical intervention.**

- **Of the remainder, should these girls subsequently become pregnant, then in 14 instances an ectopic pregnancy may occur in which the fetus will be lost and in which the mother's life may be placed at risk.**

Association between Patient and Sexual Partner

Because of the nature of the information obtained in the Manitoba study, and the presumed reluctance of many patients to identify their sexual partners, the information obtained about the type of association between these persons was incomplete and, in some instances, inaccurate, particularly with respect to the involvement of family members, relatives and close friends.

In the Manitoba survey, there were six children for whom the suspected or known sexual partners were family or household members. One of these cases involved a boy of age nine whose suspected sexual partner was listed as a "relative". The five girls whose sexual partners were suspected or known to be family or household members for whom positive smears were obtained, included:

- Girl age 4 — uncle and mother's cousins
- Girl age 4 — mother's common-law partner and his two sons
- Girl age 7 — three family members
- Girl age 10 — aunt, grandmother and grandfather
- Girl age 16 — mother's common-law partner

The number of cases involving children who had sexually transmitted diseases which may have been contracted from family members is small, representing 1.1 per cent of the children in the study. **On the basis of the Committee's findings from the several national surveys conducted, the results indicate that in cases of intercourse involving children and family members, testing is warranted to determine whether a sexually transmitted disease has been contracted.**

Sexual Assault

Apart from a few cases where the inference could be drawn from the age of the child, the records of the children who were examined and treated in the 1980-81 Manitoba Study of sexually transmitted diseases did not yield information about the extent to which these children may have been the victims of sexual assaults. The absence of this information does not mean that such offences did not occur, but only that, within the scope of the information available, acts of this kind were not recorded. At the end of 1981, the Control Division arranged to notify provincial child protection services of all cases involving a child diagnosed as having gonorrhea or syphilis. The Control Division seeks to identify the source and transmission of the infection and the Child Protection Branch undertakes an assessment to determine whether the child is in a safe social situation.

Legal Significance of Manitoba Study

The sexual abuse of children and young persons by means of assaultive or arguably *non-consensual* behaviour is examined elsewhere in this study. The findings from the Manitoba study provide an opportunity to examine sexual abuse where most of the conduct may be seen as *consensual* in fact despite any legal prohibitions. The ages of patients and partners as well as the numbers of partners give some idea of the sexual abuse of patients by their peers and by those considerably older. It is not known whether there are similar patterns in geographic areas other than that covered in the Manitoba study.

When the Committee was conducting its review, there were two different legislative proposals being considered which were intended to deal with sexual conduct with children that is not "assaultive" but that should be proscribed for other reasons. These proposals were contained in *Bill C-53*[16] and in the *Working Paper for Offences Against Young Persons*.[17] A central assumption of the proposals was that consensual sexual behaviour between young persons who are close in age is generally not harmful to the younger person and, accordingly, should not be proscribed by the criminal law. The research findings provide a means for testing the soundness of this assumption and they are considered in terms of:

1. The legal significance of instances involving a patient under 14, where the child's sexual partner(s) was less than *three* years older;
2. The legal significance of instances involving a patient 14 or 15, where the child's sexual partner(s) was less than *three* years older;
3. The legal significance of instances involving a patient 14 or 15, where the child's sexual partner(s) was less than *five* years older; and
4. The legal significance of instances involving a patient 16. Patients in this age group would not be affected by the proposals. The research findings given are presented for purposes of comparison.

Patients Under 14, Having a Sexual Partner Less Than Three Years Older

Of the partners who had sex with children 13 or younger (and for whom information on the partners' ages was available), only two (5.0 per cent) were less than three years older than the child in question. In contrast, 95.0 per cent of the sexual partners of children age 13 or younger were more than three years older than the child, and all were males.

Children Under Age 14	Partner Less Than 3 Years Older	Partner More Than 3 Years Older
Male	1	—
Female	1	38
Total	2	38

These findings are significant in relation to the sexual assault provisions of the *Criminal Code* enacted in 1983 and to the provisions of the proposed *Bill C-53* and the *Working Paper*. Consensual heterosexual or homosexual conduct between persons, one of whom is under 14 and the other of whom is less than three years older than the younger person is exempted from the prohibitions in the sexual assault provisions of the *Criminal Code*.[18] However, the absolute prohibition in section 146(1) against sexual intercourse with females under 14, which was to have been repealed under *Bill C-53*, remains in the *Code*. So do buggery and gross indecency. The latter offences were to have been repealed by *Bill C-53*, but gross indecency was to have been re-enacted. Most of the sexual acts engaged in by the children under 14 involved heterosexual intercourse where the male partner was more than three years older than the female, and neither the sexual assault provisions of the *Code*, *Bill C-53*, nor the *Working Paper* would affect the culpability of these partners. Under *Bill C-53*, however, the incidents involving sexual partners who were less than three years older than the young patient would be exempted from the prohibition against sexual misconduct with a person under 14.

Patients 14 or 15, Having a Sexual Partner Less Than Three Years Older

The findings on the ages of male partners of females 14 or 15 are significant for the legal changes proposed by *Bill C-53*. Sixty-eight of these partners were less than three years older that the female patient, while 90 of them were more than three years older. The ages of the 15 year-old females' sexual partners comprised a wide spectrum: two were 14 years-old; twelve were 15; twelve were 16; thirty were 17; eighteen were 18; thirteen were 19; five were 20; and thirty were 21 or older.

Bill C-53 would repeal the prohibition against sexual intercourse with females 14 or more and under 16 in section 146(2) of the *Criminal Code*,[19] and would introduce the vague offence of "sexual misconduct" (which would, presumably, include consensual sexual intercourse with young girls).[20] Where a female is 14 or 15, however, and the sexual intercourse is consensual, *Bill C-53* provides a complete exemption from this offence to a partner who is less than three years older.[21] Accordingly, 68 of the 158 male sexual partners (43.0 per cent) would have a complete legal defence under *Bill C-53*, a defence which they do not enjoy under the present law. The health risks to the female, especially when her sexual partner has a communicable sexual disease, are, of course, independent of her partner's age.

Of the partners of male patients aged 14 or 15, nine were less than three years older than the patient, while four were more than three years older. As with the partners of female patients, the incidents involving the partners of male patients who were less than three years older would be exempted from the "sexual misconduct" offence in *Bill C-53*. However, as already indicated, the offence of gross indecency, which applied to the extent that these incidents involved homosexual acts, was to have been re-enacted by *Bill C-53*.

Patients 14 or 15, Having a Sexual Partner Less Than Five Years Older

The study found that, of the sexual partners of the 14 and 15 year-old patients for whom information was available:

1. 13 sexual partners of male patients were less than five years older than the male in question and none was more than five years older;
2. 113 sexual partners of female patients were less than five years older than the female in question and 45 were more than five years older.

The *Working Paper* states that "'sexual exploitation', in relation to a young person, means any sexual conduct where the young person is involved as a participant or otherwise"[22] and defines "sexual conduct" as including "any touching of a sexual nature or any sexual performance, but does not include conduct of an affectionate nature that is normal in a family context".[23] Accordingly, "sexual exploitation" would presumably include sexual intercourse with a young female.[24] The *Working Paper* provides that every one who engages in the sexual exploitation of a person 14 and under 16 is guilty of an indictable offence and is liable to imprisonment for 10 years.[25] It further provides, however, that no one shall be guilty of this offence if he establishes that at the time the sexual incident took place, he was either under 16 years of age[26] or he is less than five years older than the complainant.[27] On their face, the proposals in the *Working Paper* would exempt three-quarters of the cases (126 of the 171 instances) cited in the study in which the sexual partners were less than five years older than the 14 and 15 year-old patients from the offence of sexual exploitation of a person between 14 and 16.

Sexual Partners of Patients 16 Years-old

Information was obtained in the study on ages of sexual partners (where known) of the 16 year-old patients. Some 118 male sexual partners (those age 18 or older) of the 16 year-old female patients could potentially have been charged with the "seduction" offence in section 151 of the *Criminal Code*, provided that the female in question was of previously chaste character. All of the partners of the 16 year-old female and male patients could potentially have been charged with the offence of contributing to juvenile delinquency, and the partners of the 16 year-old male patients could have been charged with the offences of buggery or gross indecency, depending on the circumstances.

Children Aged 16 Years	Partner Aged 16 or 17	Partner Aged 18, 19 or 20	Partner Aged 21 or Older
Male	34	16	8
Female	44	62	56
Total	78	78	64

Multiple Partners

Some of the young females about whom information was obtained in the survey were reported to have had intercourse with four, five and six or more partners within short periods of time. In this regard, it is relevant to recall that the proposed changes to the *Criminal Code* would apply to these circumstances as well as to situations involving single partners. The findings show that cases of multiple partners involved a range of ages in partners. If it is "normal" for these females to have "friends" with a range of ages and the physical harms are independent of the partners' ages, there would appear to be no justification for distinguishing among these partners according to age for the purpose of determining criminal responsibility. The findings on multiple partners show the arbitrariness of removing the protection of the criminal law where the partner is close in age to the patient.

Of the 293 girls in the Manitoba study, 129 had multiple partners. However, the ages were only known for 106 girls and for 68 of their 293 partners. About one in three girls (36.2 per cent) had multiple partners, as compared with about one in six boys. Over half (54.5 per cent) of the girls 12 and 13 had three or four partners. Almost one-quarter (24.4 per cent) of the girls 14 and 15 had three or four partners; and 13.3 per cent had five or six partners. Almost one-tenth (9.4 per cent) had more than six partners. A little more than one-quarter (26.0 per cent) of the 16 year-old girls had three or four partners, and two per cent had more than six partners.

Table 33.5

Girls Age 16 and Under Treated for Sexually Transmitted Diseases Who Had More Than One Partner

Age of Patients	Number of Girls	Number of Partners	Age Range of Partners	Average Age of Partners	Proportion of Girls Having Partners Age 21 and Older
Under age 14	11	26	15-75	30.7	36.4
14 — 15 years	45	126	14-35	18.2	28.9
16 years	50	116	15-36	20.6	54.0
TOTAL	106	268	14-75	20.5	41.5

The age range of partners of the 12 and 13 year-old girls having multiple partners was 15-75 years. For 14 and 15 year-old girls, it was 14-35 years, and for 16 year-old girls it was 15-36 years. The average age of the partners was 30.7 years for girls of 12 and 13; 18.2 years for girls 14 and 15; and 20.6 years for 16 year-old girls. The numbers of multiple partners and the range of ages of these partners belies any assumption that the sexual partners of young females

can conveniently be grouped into two discrete legal categories, namely: male partners close in age, in which case the sexual activity is "experimental" and should accordingly fall outside the prohibition of the criminal law; and male partners substantially older than the female, in which case the sexual activity should be proscribed on grounds of public policy. The reality appears to be that a number of younger as well as older males take their sex where they can get it, and the overall picture in these multiple partner cases is one of casual sexual exploitation.

The proportion of girls having one or more partners aged 21 and older was 41.5 per cent. For girls less than 14, it was 36.4 per cent; for those 14 and 15, it was 28.9 per cent; and for those 16, it was 54.0 per cent. However, for girls under 14, of 26 partners, 16 were between 15 and 20 years of age. For girls 14 and 15, of 126 partners, 109 were between 14 and 20.

The provisions of the proposed *Bill C-53* and the *Working Paper* would decriminalize consensual sexual intercourse with young girls where the girl is under 14 and the partner is less than three years older, and where the girl is 14 or 15 and the partner is less than three (*Bill C-53*) or five years (*Working Paper*) older than the female. The findings on females with multiple partners are similar to those with respect to the application of the proposed *Bill C-53* and the *Working Paper*. For 11 girls 12 and 13 years of age having 26 partners, none of the partners was less than three years older. For girls of 14 and 15, 40.5 per cent of the partners were less than three years older. Almost one-quarter (24.1 per cent) of the partners of the 16 year-old girls were aged 16 or 17, which means that they could not have been charged with the "seduction" offence in section 151 of the *Criminal Code*. The general findings show a similar figure. A little more than one-quarter (27.2 per cent) of the partners of the 16 year-old girls were aged 16 or 17.

Table 33.6

Difference in Age Between Female Patients Treated for Sexually Transmitted Diseases and Ages of Multiple Partners

Age of Patient	Proportion of Partners Less Than Three Years Older	Proportion of Partners Less Than Five Years Older	Proportion of Older Partners Under Age 18
	Per Cent	Per Cent	Per Cent
Under age 14	0.0	15.4	42.3
14 – 15 years	40.5	72.2	50.0
16 years	39.7	59.5	24.1

The findings on the partners of 16 year-old girls are given mainly for purposes of comparison (the offence of seduction in section 151 of the *Criminal*

Code is rarely charged). With respect to the partners of girls 14 and 15, the enactment of the legislation proposed in *Bill C-53* and the *Working Paper* would remove the criminal law prohibition against sexual intercourse with young girls from a substantial proportion of their partners who were close in age.

There is currently no defence to a charge of sexual intercourse with young girls based on the closeness in age of the accused to the complainant. The proposals in *Bill C-53* and the *Working Paper* to create defences based on closeness in age are an attempt: to ensure that the provisions of the *Criminal Code* apply equally to persons of both sexes;[28] and to de-emphasize the prohibition against sexual intercourse, by subsuming sexual intercourse under a general offence of sexual exploitation which may be committed by males and females and which may include other types of sexual conduct less likely to pose health risks. The exception for partners close in age would exclude these other types of conduct.

Underlying the proposed exception for partners close in age may be a concern that despite the health risks to the female, the punishment is too severe where the partner is close in age and there is evidence of genuine affection. In circumstances where there is no evidence of sexual abuse other than the age of the female, there should be greater flexibility available in the application of the sanction. It is at the sentencing stage that the judge can determine what weight should be given to the fact that the partner was close in age to the young girl. It has been shown throughout the findings presented in the Report that there is a great deal of discretion exercised in the law enforcement process. The findings from the National Police Force Survey indicate that very few cases of the type under discussion are reported to the police. Where they are, perhaps by angry parents, the prosecutor may decide that in the circumstances it is not appropriate to proceed any further with the case. Where the prosecutor decided to proceed, male partners who were close in age were usually charged under the provisions of the *Juvenile Delinquents Act* (replaced by the *Young Offenders Act*). Under these Acts, the judge has a wide range of alternatives to incarceration. The sanction can be selected to suit the circumstances. Under the *Juvenile Delinquents Act*, the case could be adjourned indefinitely, subject to being brought on again if the juvenile did not comply with the conditions set by the court. Under the *Young Offenders Act*, the young offender can receive an absolute discharge, possibly with a warning, or probation, the completion of which has the same effect as a conditional discharge. All young persons up to 18 years of age are dealt with under the *Young Offenders Act*.

Where an accused was just over the then current Ontario juvenile age of 16, but was close in age to the girl who was less than a month away from her fourteenth birthday, a conviction in adult court under the *Criminal Code* resulted in the imposition of a suspended sentence together with a year's probation.[29] Section 662.1(1) of the *Criminal Code* provides for an absolute and a conditional discharge. However, section 146(1) of the Code provides a maximum punishment of imprisonment for life, and section 662.1 (1) cannot be used if the offence is punishable by imprisonment for 14 years or for life. It

would be advisable to reduce the maximum punishment under section 146 in order to make an absolute or a conditional discharge available in cases where the partner is close in age and there is no other evidence of exploitation.

Because in the area of sexual offences against children the criminal law is not just morally based, and serves a protective function against specific health risks, the law must include all cases which may produce the risks in order to be effective. But comprehensiveness does not preclude appropriate disposition by the legal process, which should provide flexibility in appropriate circumstances. In view of the findings, the Committee believes that consideration should be given to including specific guidelines in the *Young Offenders Act* for dealing with such youths.

The Committee recommends maintaining the prohibition against sexual intercourse with female persons under 14 in section 146(1) of the *Criminal Code*. The Committee has also concluded, on the basis of the findings of the present study, and pending the obtaining of more complete information on the sexual abuse of young females and the attendant health risks, that the prohibition in section 146(2) against sexual intercourse with female persons 14 or more and under the age of 16 should be maintained. However, sections 146(2)(b) [complainant must be of previously chaste character] and 146(3) [court may find accused not guilty if he is not more to blame] are inappropriate to the offence and should be repealed. The Committee recommends that should an analysis of more complete information on the sexual abuse of young females not indicate significant attendant health risks, consideration should be given to repealing the prohibition against sexual intercourse in section 146(2).

Summary

1. In 1981, there were 1206 live births to girls age 15 and younger.
2. In 1981, 1806 girls age 15 and younger had therapeutic abortions.
3. The existing system for the medical identification and classification of sexually transmitted diseases requires revision with respect to the more detailed and co-ordinated listing of these conditions.
4. The present provincial statutes and regulations concerning venereal disease are inadequate. Only two of the diseases currently listed are of serious public health significance while others are not considered.
5. In the National Population Survey, one in 201 females who had been raped and one in 501 males who had been a victim of an act of buggery had contracted sexually transmitted diseases.
6. In the National Police Force Survey, one in 18 girls aged 15 years or younger who had been raped and about one in 10 boys in the same age category who had been a victim of an act of buggery were reported to have contracted a sexually transmitted disease.
7. In the National Hospital Survey, 10.4 per cent of females and 9.5 per cent of males were considered to have contracted a sexually transmitted disease.

8. In 1980, the federal Bureau of Epidemiology reported 340 cases of gonococcal infections among children age 14 or younger. The rates of these reported cases varied substantially between provinces.

9. In the 1980-81 Manitoba Study of sexually transmitted diseases in which information was given for 452 children who were 16 or younger, it was found that:

   (i) the ratio of girls to boys was more than 4:1;

   (ii) on the basis of available information, it appears that about one in four instances of gonococcal infections was likely to have pelvic inflammatory disease; and

   (iii) between 15-20 per cent of these patients may experience infertility in later life and a number of the girls will likely have ectopic pregnancies in the future.

10. In five cases involving children having sexually transmitted diseases, their partners were reported to have been relatives or family members.

11. With respect to the ages of the children and their partners, the study found that:

    (i) of children under age 14, 95 per cent of older partners were more than three years older;

    (ii) of children who were 14 and 15 years-old, 45.0 per cent of their partners were less than three years older;

    (iii) of children who were age 16, about a third of their partners (35.5 per cent) were age 16 but less than age 18; and

    (iv) for all children for whom the ages of their partners were reported, 25.1 per cent of their partners were adults age 21 or older.

On the basis of its review, the Committee recommends that section 253 of the *Criminal Code* be repealed. In its place, we recommend: that provincial health regulations and statutes be sharply strengthened; that more effective surveillance and diagnostic criteria be developed; that extensive research be undertaken to obtain necessary information; and that information about the health risks of those diseases be incorporated in the national program of public education and health promotion recommended elsewhere in the Report.

The Committee recommends that the Office of the Commissioner, in conjunction with the Department of Justice, the Department of National Health and Welfare in consultation with the provinces and non-governmental agencies appoint an expert interdisciplinary advisory committee having assigned responsibilities:

1. To conduct comprehensive research at a national level to document the known prevalence of sexually transmitted diseases contracted by children and youths and to assess the health risks involved.

2. **To develop ways of collecting information in a standard fashion across jurisdictions with regard to the occurrence of sexually transmitted disease, for children and youths under the age of 16 years.**

3. **To advise on the updating of the group of sexually transmitted disease protocols of standard and expected treatment practice, and separately advise on which of these infections should be made reportable in relation to cases involving children and youths under the relevant provincial statutes and regulations, and that in this regard, the full participation and co-operation of the Provincial Colleges of Physicians and Surgeons, and their equivalents, be sought to take an active role to encourage compliance in reporting.**

4. **To review the classification of sexually transmitted diseases and to make recommendations in relation to the modernization of the existing categories used in medical and hospital information systems across Canada.**

5. **To undertake a national survey of the experience and knowledge of children, youths and adults about sexually transmitted diseases and pregnancy, and to make recommendations with respect to the development of programs of public education and health promotion focussing upon the more effective provision of preventive and treatment services.**

In view of the findings of the present study on the health risks to young persons of pregnancy and sexually transmitted diseases, the Committee recommends that:

1. **Section 146(1) of the *Criminal Code* be retained, and that the maximum punishment for this offence be changed to a sentence of less than 14 years' imprisonment.**

2. **Section 146(2) be retained, but that sections 146(2)(b) and 146(3) of the *Criminal Code* be repealed.**

3. **Section 140 of the *Criminal Code* be amended to specify the age of 16 years instead of the present age of 14 years.**

4. **Section 147 of the *Criminal Code*, which states that no male person shall be deemed to commit an offence under section 146 while he is under the age of 14 years, should be repealed. This provision is a legal anachronism, and no longer serves any useful purpose. The relevant age should be the general age of criminal responsibility, which is set at 12 in the *Young Offenders Act*.**

The Committee considers that the proposed amendments to section 146 constitute a threshold legal means of providing needed protection for children and youths for the risks associated with pregnancy and sexually transmitted diseases. We believe that the proposed amendment of the law, by itself, will accomplish little unless it is accompanied by the undertaking of national surveys of the prevalence of and the health risks associated with these conditions, and by the provision of information necessary to make young persons and their parents fully aware of these risks.

References

Chapter 33: Live Births, Therapeutic Abortions and Sexually Transmitted Diseases

[1] United Kingdom. *Report of the Departmental Committee on Sexual Offences against Young Persons*. London: H.M.S.O., Cmd. 2561, 1925, pp. 12-13, 25-26.

[2] *Ibid.*, pp. 25-26.

[3] Canada. Statistics Canada. *Vital Statistics. Volume I. Births and Deaths, 1981*. Ottawa: Supply and Services Canada, 1983, pp. 6-7.

[4] Canada. Statistics Canada. *Therapeutic Abortions, 1981*. Ottawa: Supply and Services Canada, 1983, pp. 65-66.

[5] *Ibid.*, p. 114.

[6] Based on Statistics Canada, *supra*, note 4, p. 79.

[7] *Ibid.*, pp. 100-101.

[8] *Ibid.*, p. 103.

[9] *Ibid.*, p. 136.

[10] Canada. *Report of the Committee on the Operation of the Abortion Law*. Ottawa: Supply and Services Canada, 1977, p. 348.

[11] Ontario. *Report of the Commission of Inquiry into the Confidentiality of Health Information in Ontario*, Volume 3. Toronto: Queen's Printer for Ontario, 1980, pp. 73-113.

[12] *An Act to amend the Criminal Code*, S.C. 1919, c. 46, s. 8.

[13] *R. v. Clarence* (1888), 22 Q.B.D. 23.

[14] See *Re Keenan and The Queen* (1979), 57 C.C.C. (2d) 267 (Que. C.A.), on the issue of judicial interim release of an accused suffering from venereal disease and charged as a "found-in" under s. 193(2) of the *Cr. Code*.

[15] (1926), 45 C.C.C. 236 (Sask. C.A.).

[16] *Bill C-53* received first reading in the House of Commons on January 12, 1981, but was not enacted. It was intended to deal with both assaultive sexual offences and sexual offences against young persons.

[17] The *Working Paper for Offences Against Young Persons* is a discussion paper prepared by the federal Department of Justice dealing with sexual offences against children, including the use of children in the making of pornography. It revises some of the provisions of *Bill C-53*.

[18] *Cr. Code*, s. 246.1(2).

[19] *Bill C-53*, clause 5.

[20] *Ibid.*, clause 6.

[21] *Ibid.*, clause 6, proposed new s. 167(2)(b).

[22] *Working Paper*, clause 1, proposed new s. 137.1.

[23] *Ibid.*

[24] Clause 3 of the *Working Paper* provides for the repeal of s. 146 of the *Cr. Code*.

[25] *Working Paper*, clause 1, proposed new s. 137.3.

[26] *Ibid.*, clause 1, proposed new s. 137.3(2)(a).

[27] *Ibid.*, clause 1, proposed new s. 137.3(2)(b).

[28] Explanatory note to *Bill C-53*, p.1(a).

[29] *Regina v. Stevens* (1983), 5 C.R.R. 139 (Ont. C.A.) and n, leave to appeal to the Supreme Court of Canada granted June 6, 1983 (S.C.C.).

Chapter 34

Genetic Risks of Incest

In addition to religious and social concerns, one of the reasons for the almost universal prohibition of incest (in Canada, the prohibition is in section 150 of the *Criminal Code**) is that over the centuries it has been observed that the offspring of such matings are more likely than other children to display severe abnormalities or mental retardation. Extensive studies on animals and humans have demonstrated that mortality and morbidity are increased, and that growth and vigour are decreased, in the first-generation offspring of closely consanguineous parents, as compared with offspring of unrelated parents.

In this chapter, the genetic risks to children of incest are reviewed with respect to the likelihood of their experiencing more hereditary disabilities than children born from other types of parents and a synopsis is given of the findings of a number of research studies which have dealt with these issues. A glossary of genetic terms and phrases is provided as a guideline for non-geneticists.

Risks of Defects in the General Population

Not every couple is fertile, not every conception leads to a live birth and not every liveborn child is normal. On the contrary, one child in 30 in the general population has some significant handicap. Examples of some of the risks faced, based on a summary by Harper[1] modified on the basis of recent Canadian vital statistics, are listed below. These statistics serve as a baseline against which the risks to children of incest can be assessed.

Basic Risks for the General Canadian Population

• Risk that a couple will be infertile	1 in 10
• Risk of spontaneous abortion	1 in 8

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*150 (1) Everyone commits incest who, knowing that another person is by blood relationship his or her parent, child, brother, sister, grandparent or grandchild, as the case may be, has sexual intercourse with that person.

(4) In this section, "brother" and "sister", respectively include half-brother and half-sister.

- Risk of perinatal death 1 in 80
- Risk of death in first year of life after first week 1 in 200
- Risk of a serious physical or mental defect present at birth 1 in 50
- Risk of a significant handicap apparent in early childhood 1 in 30

Figure 34.1
Glossary of Genetic Terms*

Autosomal. Determined by a gene on one of the 22 pairs of automes (not the sex-chromosomes).

Autosomal Dominant. Pattern of inheritance in which the autosomal gene responsible is on only one chromosome of a pair, matched with a normal partner gene.

Autosomal Recessive. Pattern of inheritance in which the autosomal gene responsible must be on both chromosomes of a pair.

Carrier. An individual who is heterozygous for a normal gene and an abnormal gene that is not expressed phenotypically, though it may be detectable by appropriate laboratory tests.

Coefficient of Consanguinity. The probability that an individual has received both alleles of a pair from an identical ancestral source; or the proportion of loci at which he is homozygous.

Chromosome. When a cell divides, the nuclear material (chromatin) loses the relatively homogeneous appearance characteristic of non-dividing cells, and condenses to form a number of rod-shaped organelles which are called chromosomes (chromos, colour, soma, body) because they stain deeply with certain biological stains.

Consanguinity. Relationship by descent from a common ancestor.

Empiric Risk. Estimate that a trait will occur or recur in a family based on past experience rather than on knowledge of the causative mechanism.

Gene. Units of genetic information (genes) are encoded in the deoxyribonucleic acid (DNA) of the chromosomes.

Heterozygous. An individual who has two different alleles, one of which is the normal allele, at a given locus on a pair of homologous chromosomes.

Homozygous. An individual possessing a pair of identical alleles at a given locus on a pair of homologous chromosomes.

Inbreeding. The mating of closely related individuals. The progeny of close relatives are said to be inbred.

Multifactorial. Determined by multiple factors, genetic and possibly also nongenetic, each with only a minor effect.

Mutation. A permanent heritable change in the genetic material.

X-linked. Pattern of inheritance of genes on the X chromosome.

*Thompson, J.S. and M.W. Thompson, *Genetics in Medicine*, 3rd ed., Philadelphia: Saunders, 1980.

Genetic Principles

To review briefly the basic facts about the elements of human genetics: humans, like other sexually propagating organisms, have a double inheritance, receiving from each parent a full set of 23 chromosomes with their specific content of genes. In turn, each child receives a copy of one member of each of the 23 pairs; it is purely a matter of chance which one of any pair the child receives. Fertilization (the union of an egg and a sperm) restores the double quota. The genes, of which humans probably have about 50,000 pairs altogether, contain in coded form the blueprint for the production of all the structural and functional components of the organism.

Genetic defects can be caused by a number of mechanisms involving mutational changes in single genes (Mendelian or single-gene inheritance), by inappropriate combinations of many genes with small individual effects, and also in some cases, affected by environment (multifactorial inheritance) and alterations of chromosomal number or structure. Certain environmental factors can increase the risk of birth defect, in the absence of any specific genetic mechanism.

Almost all of the defects which are more common in children of consanguineous parents ("inbred children") than in children of unrelated parents ("outbred children") are of two main kinds: many are rare traits determined by single genes with autosomal recessive inheritance, and others are abnormalities (malformations or mental retardation) with multifactorial inheritance. These types of disorders reflect the two major genetic effects of inbreeding.

1. An increase in the probability that the child will inherit some rare autosomal recessive gene in double dose, thus causing a major defect.
2. An increase in the variance of the genetic liability to multifactorial conditions, thus increasing the risk of common congenital malformations and of mental retardation.

Autosomal recessive disorders are caused when both members of a gene pair are abnormal, each parent having transmitted the same abnormal gene to their child. In this case, the affected child is homozygous and both parents are usually heterozygous for the abnormal gene ("carriers"), although occasionally, one or both may be homozygous. Autosomal recessive conditions can occur only when a child inherits two copies of a particular abnormal gene, one from each parent. It is generally agreed in genetic research on the basis of human population studies that most persons are heterozygous for one or more genes which have little or no effect in heterozygotes, but which would be lethal if they were homozygous.[2] If one parent is a carrier of such a gene, the other parent is much more likely to carry the same gene if the parents are related by descent than if they are unrelated. Thus, though the same autosomal recessive conditions can affect either inbred or outbred children, there is a higher risk that they will occur when the parents are related.

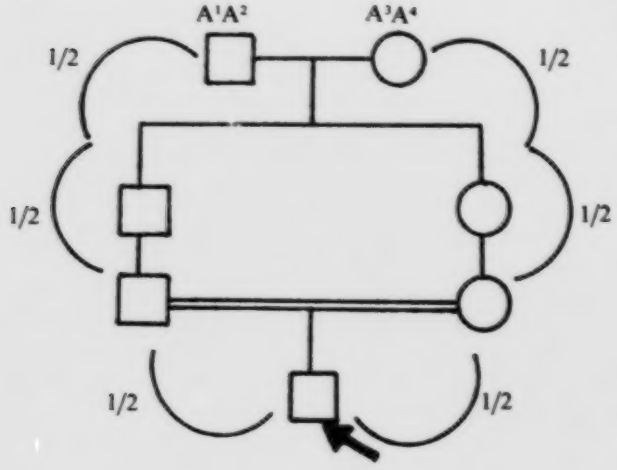
Individually, the numerous autosomal recessive diseases are all quite rare. Cystic fibrosis, which affects one in every 2000 children in Canada, is perhaps the most common such disease of this kind, although worldwide, certain blood disorders (sickle cell anemia and thalassemia) occur even more frequently. Many diseases with the autosomal recessive pattern of inheritance are exceptionally rare in the general population. Since heterozygotes are usually symptomless, as a rule the only way parents learn that they are heterozygous is by having an affected child.

An important feature of autosomal recessive inheritance is that heterozygotes are much more common than homozygotes. For example, although only one child in 2000 is homozygous for cystic fibrosis, almost one parent in 20 is heterozygous for the gene. Even for a much rarer condition, such as the classic form of phenylketonuria which has a population frequency in Ontario of about one in 30,000 births, more than 1 per cent of the population is heterozygous.

Although the general risk of being a carrier is high, it is much lower than the risk that a close relative of a carrier will also be a carrier. To give an example: if a woman is a carrier of albinism, the risk that her child will be an albino is only about one in 300 if the child's father is an unrelated person, but it is one in 32 if the father is a first cousin of the mother and one in eight if the father is the mother's brother or her father. Other types of genetic disorders (autosomal dominant or X-linked single-gene traits, or chromosomal defects) contribute little to the increased genetic risk for offspring of close relatives.

Measurement of Inbreeding

For formal analysis of inbreeding effects, geneticists use the inbreeding coefficient, F for short, which measures the closeness of a relationship in terms of the probability that both members of any gene pair in the child are identical by descent.



Chance:

A^1A^1	= 1/64
A^2A^2	= 1/64
A^3A^3	= 1/64
A^4A^4	= 1/64
F	= 1/16

To illustrate how F is calculated, the accompanying sketch shows the child of a first cousin mating.

At any specific gene locus, the child's great-grandparents have two genes each, or four in all. They are labelled A^1, A^2, A^3 and A^4 in the figure. For A^1 to be homozygous in the child, it must be passed from great-grandfather to grandfather to father to child, *and* from great-grandfather to grandmother to mother to child. The probability that A^1 will be transmitted (rather than its partner) is 1/2 for each step, altogether $(1/2)^6$ or 1/64. But there are four ways in which the child can be homozygous for a gene present in one of his or her parents' common grandparents: A^1A^1, A^2A^2, A^3A^3 or A^4A^4. His or her inbreeding coefficient is therefore $4(1/2)^6$ or 1/16.

Several types of consanguineous mating are shown in Figure 34.2, and the corresponding degrees of relationship and inbreeding coefficients are given in Table 34.1. Theoretically, the genetic risk to the offspring of a consanguineous marriage is proportional to the inbreeding coefficient; in other words, the risk is twice as high for an uncle-niece mating and four times as high for a parent-child or brother-sister mating as for a first-cousin mating. The studies of consanguineous matings reported in the medical genetics literature, in general, support this theoretical viewpoint.

Genetic Effects of Consanguineous Mating

Offspring of Cousin Matings

Risks to children of cousin matings have been reported for a number of populations. The most extensive studies of this kind were those undertaken in Japan after World War II as an offshoot of studies of the children born to parents exposed to the atomic bombing of Hiroshima and Nagasaki.[3-5] The frequency of consanguineous marriage is relatively high in Japan, at least by Western standards. In the study population at the time of the inquiry, between 4 and 5 per cent of all marriages were between first cousins. The studies compared the offspring of first cousins, first cousins once removed, second cousins and unrelated parents. The findings showed that inbreeding increased the frequency of major congenital malformations, and of mortality, especially in the first nine months of life. The differences, though statistically significant, were not large. Major defects had an approximate occurrence of 8.5 per cent in the offspring of unrelated parents and 11.7 per cent in the offspring of first cousins. The proportion of infant deaths was 3.5 per cent in liveborn children of unrelated persons and 5.5 per cent in children of first cousins. Achievement in school was slightly depressed in the children of the inbred matings, the difference indicating that their average intelligence quotient was about six points lower than that of the comparison group. There was also evidence that inbred children had an increased susceptibility to infection.

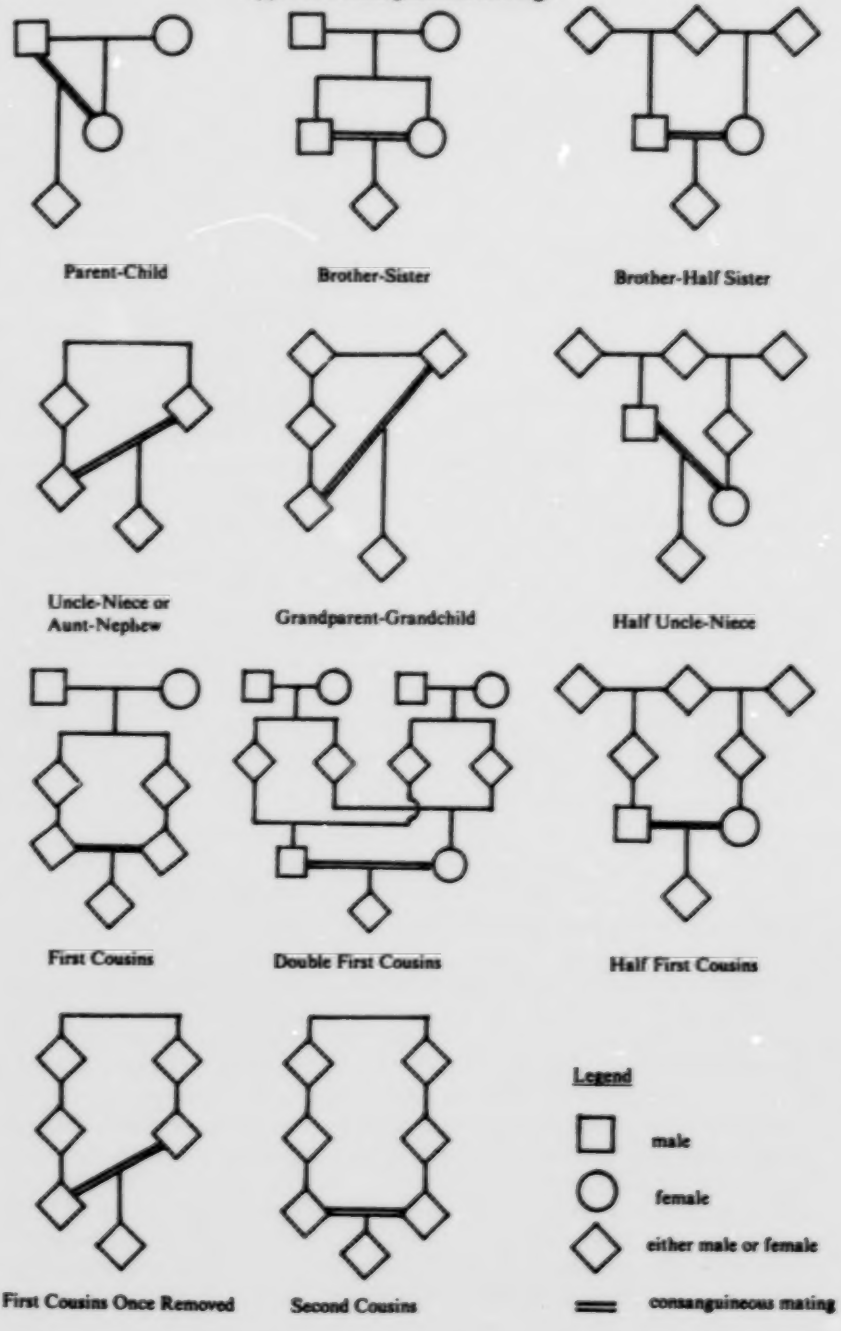
Table 34.1

Types of Consanguineous Matings and Consequences for the Offspring

Category of Mating	Degree of Biological Relationship	Proportion of Genes Shared by Mates	(Coefficient of Inbreeding of Child)	Risk that Child will be Homozygous for a Particular Recessive Gene carried by one Parent
Parent/child	1st Degree	1/2	1/4	1/8
Brother/sister (including twins)	1st Degree	1/2	1/4	1/8
Brother/half sister	2nd Degree	1/4	1/8	1/16
Uncle/niece or aunt/nephew	2nd Degree	1/4	1/8	1/16
Grandparent/grandchild	2nd Degree	1/4	1/8	1/16
Half uncle/niece (or similar combination)	3rd Degree	1/8	1/16	1/32
First cousins	3rd Degree	1/8	1/16	1/32
Double first cousins (all four grandparents in common)	2nd Degree	1/4	1/8	1/16
Half first cousins (one grandparent in common)	4th Degree	1/16	1/32	1/64
First cousins once removed	4th Degree	1/16	1/32	1/64
Second cousins	5th Degree	1/32	1/64	1/128

Figure 34.2

Types of Consanguineous Matings



Other variables measured having no difference or only a slight difference between the inbred and outbred children were: the frequency of stillbirths; physical growth and development; dental characteristics; and neuromuscular status.

Although other studies of the effects of consanguinity[6-12] agree in general that there is a small increase in empirical risk of mortality, severe abnormality or retardation in the offspring, the findings of these studies vary considerably with respect to the magnitude of the risks. A generally accepted figure, one used by many medical geneticists for the purposes of genetic counselling, is that the increased risk (above the baseline risk to any child) for the offspring of first-cousin parents is 3 per cent, and for the offspring of first cousins once removed or second cousins, it is about 1 per cent.[13] More distant consanguineous matings are not considered to differ genetically from so-called "random matings".

Fraser and Biddle approached the estimate of consanguinity effects by using records on consanguineous couples ascertained through a child with an abnormality, and correcting for bias by measuring the frequency of conditions other than that through which the matings were ascertained.[14] These researchers analyzed the experience of 58 families with first-cousin parents, 27 with second-cousin parents and 85 unrelated controls. There was a significant increase in the proportion of infant deaths occurring below one year of age in the consanguineous children (8.9 per cent) as compared with that of the controls (3.5 per cent). The occurrence of morbidity was 3.7 per cent in the consanguineous group in comparison to 1.9 per cent in the controls; the difference was not statistically significant, but in its direction and size it was similar to the results obtained in other studies. No autosomal recessive disorders were recognized in either group. The authors cautioned that the increased infant mortality associated with inbreeding may partly be accounted for by environmental differences between the consanguineous and nonconsanguineous parent groups.

Offspring of Uncle-niece Matings

Although uncle-niece marriage is legal in some populations, a report of the offspring of 27 uncle-niece marriages in the Moroccan Jewish community in Israel is the only objective description available of the genetic consequences of this type of mating.[15] Since the families were identified by means of the Jerusalem Perinatal Study, only those matings in which the wife was pregnant at the time of the study (1966-68) were considered; thus there was a bias with respect to the exclusion of sterile or relatively infertile couples and those whose pregnancies may have aborted early. The 27 uncle-niece couples had had 155 previous pregnancies. A control group of 27 couples, matched for country-of-birth (Morocco), age and socioeconomic status, had had 154 previous pregnancies. The mortality rate was much higher (16.8 per cent) in the children of the uncle-niece matings than in the controls (6.7 per cent). The malformation rate

was 8.9 per cent in the inbred children and 3.7 per cent in the controls. Birth weight was lower in the inbred group, but the difference was small and not statistically significant. The occurrence of stillbirths was not affected.

Although there are no other reports of the genetic consequences of uncle-niece matings, Bashi's study on the cognitive performance in children of closely related Arab parents in Israel provides findings on the intelligence of children of double first cousins, for whom F=1/8, the same as for uncle-niece pairs.[16] Bashi studied 125 offspring of double first cousins, 970 offspring of first cousins, and 2,108 children of unrelated parents. All of the children were between 10 and 12 years of age and attending school, but on all the tests of cognitive ability used, the offspring of double first cousins ranked lowest in average standing, the offspring of first cousins were intermediate, and the offspring of unrelated parents were highest.

Offspring of Parent-child and Brother-sister Matings

Because of the stigma associated with incest, it is not surprising that there is little precise information on the genetic consequences to the children of first-degree relatives. There have been only five studies dealing with these unions, four of which describe the experience of small numbers of persons. The findings of these studies are summarized in Table 34.2.

The first report was that by Carter from England who identified 13 children of incest prior to birth or as newborns and followed them for a period of between four and six years.[17] Only five were normal. Three had died, one of a definitely autosomal recessive disease, one of a disease which was probably autosomal recessive, and one of a cardiac defect which is now considered to have multifactorial inheritance. One child was severely retarded and the four others were educationally subnormal.

In Michigan, Adams and Neel studied 18 children of incest and 18 controls whose mothers were matched as closely as possible for race, age, stature, weight, intelligence and socioeconomic status.[18] All of the mothers were unwed and were pregnant for the first time. The cases were ascertained during pregnancy, and the children were examined at birth, at the age of six months, and later, if there were abnormal findings. The children of incest averaged one-half pound (240 g) less at birth than the weight of the control children. Of the 18 children, only seven were normal. By the time of the six month evaluation, five had died, one had a major malformation (bilateral cleft lip), two were severely retarded and three were less severely retarded, with intelligence quotients (IQs) of about 70. By comparison, all of the children in the control group had survived, of whom one had a major malformation (a branchial cleft cyst), 15 had average intelligence (IQ of 91 or more), and three were mildly retarded (IQ of 80-90). The frequency of "death-plus-major defect" was 33 per cent in the children of incest and 5.4 per cent in the comparison group. In addition, the frequency and severity of mental retardation was higher in the children of incest.

Table 34.2

Risks to Children of Incest

Author	Number of Children	Number Living at Time of Follow-up	Number Normal	Probably Autosomal Recessive	Abnormalities Reported[1]		Non-specific Retardation	
					Probably Multifactorial	Unclassified	Severe	Mild
Carter, 1967	13	10	5	2	1	—	1	4
Adams & Neel, 1967	18	13	7	—	1	—	2	3
Seemanova, 1971	161	138	78	—	—	51	20[2]	Not Stated
Knight (cited by Bundey, 1980)	23	Not Stated	7	3	3	—	5	11
Baird and McGillivray, 1982	29	29	9	3	—	9	6	

[1] Some children had more than one abnormality.

[2] Twenty other children were both retarded and physically abnormal.

The largest series of the offspring of incest studied, a group of 161 children, was reported from Prague by Seemanova.[19] In this retrospective study, the children were identified after birth by means of their medical records. The comparison group consisted of 95 children born to the same mothers with unrelated partners. Although this choice of controls has obvious advantages, the two groups differed with respect to maternal age (four to five years older in the control group) and with respect to parity (the pregnancies producing the children of incest were usually the mothers' first pregnancies). Twenty-three of the 161 children of incest (14.3 per cent) and five of the 95 controls (5.3 per cent) had died by the time of follow-up. Among the survivors, 78 of the 138 children of incest (56.5 per cent) were classified as normal; the remainder had: congenital malformations; other types of abnormalities probably inherited as autosomal recessive, such as congenital deafness and mucopolysaccharidosis; mental retardation; or a combination of these disorders. In the comparison group, 85 of the 90 children were normal.

A short series of 23 children of incest, ascertained at or shortly after birth, was analyzed by Knight.[20] Only seven children were normal at follow-up, three had autosomal recessive disorders, three had malformations presumed to be multifactorial, five were severely retarded, 11 were mildly retarded and five had other defects. (Some children had more than one abnormality.)

A study conducted in British Columbia has provided findings on 29 children, 21 of whom were ascertained because of incest and eight because of medical problems that warranted referral to a paediatric genetics unit.[21] A high risk of early death, abnormality and retardation was found. In the group of 21 children, nine were normal and 12 had abnormalities, nine of which were severe. Eight had low birth weights (less than 2500 gm) that could only be accounted for in part by the young age of their mothers (average age being 16 years). Six of the children were developmentally delayed or retarded. In the second group, all of the children were abnormal. One of the first group and three of the second had autosomal recessive conditions. Two children had died a few months after birth of sudden infant death syndrome.

None of the research studies of the children of first-degree relatives is ideal with respect to the size of the groups investigated or with respect to the design of the research methods used. Each study suffers from certain unavoidable methodological weaknesses. Four dealt with relatively small groups, three lacked controls and in none was information given about the risk of sterility or early fetal loss. The ascertainment of cases, the classification of the defects observed and the duration of the period of follow-up were not uniform. It is often impossible to be sure from the findings presented whether a particular identified abnormality was autosomal recessive, multifactorial, otherwise genetically determined or nongenetic. **Although it is difficult to compare the findings of the studies, nevertheless, they are in general agreement on one point, namely, that children of incest are at high empirical risk of abnormality, severe mental retardation and early death.**

Comparative Risk of Genetic Disease

The risk of serious abnormality in the offspring of a first-degree mating (parent-child or brother-sister) is about one-half and the risk for a child of a second-degree mating (grandparent and grandchild) is close to one-tenth. Both of these rates are well above the risk in the general population of between 2 and 3 per cent. Early childhood mortality is exceptionally high in both groups.

These risks are clearly not negligibly low. They should certainly be taken into account by physicians, adopting parents and others responsible for children who are or might be of incestuous origin.[22,23] One basis that can be used in considering the level of these risks is the standard used in genetic counselling. There is a tendency among genetic counsellors and parents who consult them to characterize a risk of genetic disease below 10 per cent as "low" and a risk above 10 per cent as "high". However, there is another principle to which genetic counsellors, almost without exception, subscribe; namely, that the parents themselves must be the final arbiters of their own risk. In practice, it is found that there is a very wide variation in the parents' perception of risk. Some parents will continue to have children, even when those children face a 50 per cent risk of having a serious genetic disease. In contrast, other parents will shy away from a risk as low as 1 per cent and will refrain from having more children.

The risk of genetic disease in the offspring of a first-degree incestuous mating falls in the same range as that for single-gene diseases. For example, if one parent has a dominantly inherited disease (i.e., a disease which occurs when only one of a pair of genes is defective) and the other parent is healthy, the risk of a child of the marriage having the same disease as the affected parent is one half. If two normal parents have a child with a recessively inherited disease (i.e., a disease which occurs when both genes of a pair are defective), then the risk of their next child having the same disease is one quarter. In both of these examples, the risk would be predictable in advance. The parents would, if they sought counsel, be informed of these risks, but they would be encouraged and helped by their physician or genetic counsellor to reach their own decision about whether they should have more children. As noted, it is known as a matter of experience that some parents, though perhaps a minority, will, when faced with risks of this magnitude, still elect to have more children. In this respect, there is no law which prohibits them from doing so.

In summary, with respect to the comparative risk of children having a genetically inherited disease, the offspring of incestuous matings are subject to exactly the same genetic defects as other children; that is to say, any genetic disorder seen in the child of an incestuous union may also be found in the offspring of unrelated parents. The risk of genetic disorders in children of incest lies in the same range as the risks to children of unrelated parents who are genetically predisposed to have defective children. However, **the probability that a genetic disorder will be present is much higher for children of incest than for children of unrelated parents in the general population (as high as about 50 per cent rather than about 2 to 3 per cent).**

Summary

On the basis of comparative studies of inbred and outbred human populations and of studies of experimental organisms, the following conclusions are reached:

1. Inbred children are at increased risk of early mortality, congenital abnormalities and cognitive disability.
2. The disorders seen in inbred children are not different in nature from those for which any child is at risk.
3. The probability, however, that a genetic disorder will be present in the children of incest is much higher than it is for children of unrelated parents in the general population.
4. The more closely related the parents, the higher the risk of defective offspring.
5. The risk is higher when the parents are from a normally outbred population than when they are from a relatively inbred group.
6. With minor exceptions, the increase in risk applies only to the first-generation offspring of related parents, not to subsequent generations.
7. The magnitude of the risk, even for children of parent-child or brother-sister unions, is in the same range as the risk to children of unrelated parents having certain genetic constitutions.

The incest prohibition in the *Criminal Code* includes blood relationships where there is a risk of genetic disorder in the children well above the risk in the general population. Of course, children of some unrelated parents may have a similar chance of having a serious genetic disease. Today, it is possible, in an increasing number of cases, to determine whether the parent is affected. But it is necessary to make the determination. The incest provision in the *Criminal Code* serves the useful purpose of providing a specific indicator of higher risk for the limited number of blood relationships it describes.

As other findings in the Report clearly show, most incest relationships involve adults and children and typically entail harassment, seduction, threats or the use of physical force against the child. In the Committee's view, while the social and legal considerations given elsewhere in the Report alone warrant the retention of the offence of incest in the *Criminal Code*, the findings of the review of the genetic risks to children of incest support further the case for retaining the incest prohibition.

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Chapter 34: Genetic Risks of Incest

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Chapter 35

Criminal Injuries Compensation Boards

In each province and territory (except Prince Edward Island), there is an administrative board whose function is to award compensation to innocent victims of violent crime. This chapter reviews the practice of these boards in awarding compensation to young victims of sexual assault.

Compensation

The role of criminal injuries compensation boards has been outlined in a 1983 report compiled jointly by Statistics Canada and the Federal Department of Justice:[1]

> From a social security point of view, criminal injuries compensation forms part of a large network of programs to ensure that Canadian residents enjoy both income security and necessary social services, regardless of their socio-economics status . . . From a justice perspective, criminal injuries compensation represents a significant development to improve the criminal justice system, by compensating innocent victims of violent crime. It is seen as part of a wider effort which includes amendments to Canada's *Criminal Code*, the development of modified procedural rules, the placing of increased emphasis on services for crime victims and the encouragement of community based alternatives to the regular criminal court process and prisons.

Funds for the payment of compensation awards and for the administration of the programs come from the Consolidated Revenue Fund of each province and territory.[2] These outlays are reimbursed in part by the federal government, through the operation of a federal-provincial cost-sharing program established in 1973 and revised in 1977.[3] Although the compensation programs in each province and territory differ in important respects, the broad outline of these programs can be stated briefly. Compensation is awarded for injury or death resulting from:

1. A specified crime (including most sexual offences) committed by another person.
2. An effort to prevent crime (either with or without the assistance of a peace officer).
3. An effort to arrest an offender or suspected offender.[4]

The injured party or his or her representative must apply within stated time periods which normally may be extended at the discretion of the Board. The Board must be satisfied that the injury or death for which compensation is claimed resulted from one of the three reasons specified above. It is empowered to hear all relevant evidence regardless of whether such evidence would be admissible in a court of law. In eight Canadian jurisdictions, the Board may hold the hearing *in camera* in appropriate circumstances, for example, where the applicant is a victim of sexual assault. In four jurisdictions, the Board may issue an order prohibiting the publication of evidence raised at the hearing.

The arrest or conviction of the offender is not a prerequisite to the granting of compensation. Where the offender has been apprehended, convicted and has exhausted his or her legal appeals, this is considered conclusive proof that a criminal offence has been committed.

Compensation may be awarded in the form of lump sum payments, periodic payments, or both. Victims may proceed, simultaneously, to seek criminal injuries compensation and a civil remedy in the courts. Where a victim is successful in obtaining both a compensation award and a civil judgment for damages, he or she is required to repay the compensation received, in whole or in part. If the victim obtains a compensation award and does not launch a separate civil action for damages, the victim's future right of action is normally subrogated to the Board or to the relevant provincial Minister.

From the perspective of sexual assault victims, a key issue is the nature and amounts of damages which may be awarded under criminal injuries compensation schemes. All jurisdictions impose a statutory maximum on the amount of compensation which may be awarded. Beyond these statutory upper limits, no additional compensation may be granted, regardless of the severity of the applicant's injury or disability. Moreover, these upper limits are far lower than the largest amounts for damages awarded in civil actions.

A further problem is the kinds of damages for which compensation may be awarded. The principal damages suffered by sexual assault victims will often be non-pecuniary; the victim may have suffered no permanent physical injury, but may nonetheless have incurred lasting emotional and psychological injuries (non-pecuniary damages) which, in some jurisdictions, are considered non-compensable. For example, there is no provision for compensating "pain and suffering" in the criminal injuries compensation schemes in Quebec, Manitoba, Alberta and the Northwest Territories. Further, in two of the provinces in which compensation for "pain and suffering" may be awarded — New Brunswick and Saskatchewan — it appears that only pain and suffering experienced by the victim can be claimed, and not that experienced by the victim's dependants or by the persons responsible for a disabled victim's maintenance.

There are, however, statutory provisions which directly address at least a narrow class of sexual assault victims. The inclusion of pregnancy and nervous shock within the definition of "injury" in all jurisdictions, except Nova Scotia, suggests that some compensation will be awarded to sexual assault victims in

this category. Further, payments for the maintenance of a child born as a result of a sexual assault are expressly authorized in eight jurisdictions.

Year	Total Number of Cases Compensated	Proportion of Compensation for Sexual Assault Cases
		Per Cent
1975–76	1963	3.7
1976–77	2586	3.7
1977–78	2604	3.6
1978–79	3232	4.5
1979–80	3812	4.5

Although compensation for sexual assault cases constitutes a small proportion of all awards for which compensation has been provided, the proportion of these cases rose from 3.7 per cent in 1975-76 to 4.5 per cent in 1979-80 for eight provinces and territories (except Prince Edward Island and Nova Scotia).[5] This trend indicates that there is a growing recognition of these Boards as a public resource that can be turned to as a means of assistance for victims of sexual assaults.

Case Studies

The case studies obtained from the official records of the criminal injuries compensation boards in Ontario, Saskatchewan and British Columbia illustrate the range of considerations which these boards take into account in assessing the level of compensation that should be awarded to young victims of sexual assault. The year in which the award was made is indicated in each case; information tending to identify the victims has been deleted.

Compensation Awards in Ontario

Although the Ontario Criminal Injuries Compensation Board has made several compensation awards to young sexual victims since 1979, the case studies presented below are taken from 1978-79 and preceding years; the incidents involving young sexual victims who applied for compensation in more recent years are not reported fully enough to serve as a basis for case studies.

The amounts awarded for pain and suffering to each applicant constitute a part of the total compensation award in each case.

Case Study 1 (1978-79)

> The victim, a six year-old boy, was enticed into a garage where he was beaten with an empty bottle. There was also an attempted sexual assault. He sustained lacerations to his head, arm and leg, and still has nightmares. The offender was charged and convicted of assault causing bodily harm. He received a suspended sentence with three years' probation.

Compensation Awarded: Total — $1,080.00 (pain and suffering, $1,000.00).

Case Study 2 (1976-77)

The applicant, then age 16, was attacked and raped in a field after accepting a ride from an unknown male. After stabbing the victim twice, the offender piled bricks and rocks on top of her. The offender was convicted of attempted murder and sentenced to life imprisonment.

Compensation Awarded: Total — $3,000.00 (pain and suffering, $3,000.00).

Case Study 3 (1976-77)

The applicant's daughter, age 15 at the time of the hearing, was returning to her sister's home in Toronto when a man who had been following her tried to force himself upon her. When she resisted, he slashed her across the throat with a knife and also across the palm of her right hand. The offender was convicted of wounding and sentenced to three and a half years in federal penitentiary.

Compensation Awarded: Total — $2,765.00 (pain and suffering, $2,000.00).

Case Study 4 (1976-77)

The applicant's son, then age four, was indecently assaulted by a 16 year-old male. The victim suffered bodily harm and nervous mental shock. The latter condition, at the time of the compensation hearing, was still evident to his doctors. The victim was undergoing regular weekly treatments as a result. The offender was convicted of indecent assault and given a suspended sentence with two years' probation.

Compensation Awarded: Total — $3,910.00 (pain and suffering, $3,500.00).

Case Study 5 (1976-77)

The applicant's daughter, then age 13, was the victim of a brutal assault and rape. She sustained extensive bruising and swelling on the left side of her face, two front teeth were broken and there was a large bruise around her neck where she had been tied with a rope. The victim became withdrawn and introverted. The offender was sentenced to eight years' imprisonment for rape and two years' concurrent for robbery.

Compensation Awarded: Total — $5,250.00 (pain and suffering, $5,000.00).

Case Study 6 (1976-77)

The applicant's daughter, then age eight, was abducted and raped by the offender. She was found nude in a ditch with one of her socks tied around her throat. She sustained massive injuries to the vaginal wall extending to the cervix and through to the rectum. The offender was sentenced to two concurrent terms of life imprisonment for attempted murder and rape, and to a concurrent sentence of four years for the kidnapping.

Compensation Awarded: Total — $11,896.20 (pain and suffering, $11,000.00).

Case Study 7 (1976-77)

The applicant's daughter, then age 16, was returning home from a party when she was approached by the offender and threatened with a knife. The offender took her to a deserted spot and, after gagging her with a scarf and tying her hands with leather thongs, raped her two or three times. He then started to torment her by throwing lighted matches at various parts of her body, after dousing her with alcohol. He then slashed her left breast with the

knife. The offender was convicted of rape and sentenced to 15 years' imprisonment.

Compensation Awarded: Total — $6,385.00 (pain and suffering, $6,000.00).

Case Study 8 (1975-76)

The applicant, a 16 year-old girl, was walking to her place of residence one night when she was punched and raped by an unknown male. She subsequently became pregnant and was recommended for a therapeutic abortion, which she had.

Compensation Awarded: Total — $3,080.90 (pain and suffering, $2,000.00).

Case Study 9 (1975-76)

The victim, a 12 year-old girl, was invited by neighbours to their cottage for two weeks. One night during this visit, the husband-neighbour raped the victim. The offender was subsequently convicted of the offence of unlawful sexual intercourse with a female under 14 years of age and was sentenced to imprisonment for two years less a day.

Compensation Awarded: Total — $1,817.30 (pain and suffering, $1,500.00).

Case Study 10 (1975-76)

The victim, a 14 year-old girl, was playing with two friends when she was grabbed by the offender and beaten until she was unconscious. He then dragged the victim to a shack where he raped her and forced her to commit fellatio. The victim sustained bruises about the face and external genitalia. The offender was convicted of rape and sentenced to 12 months' imprisonment to be followed by an 18 month probationary period.

Compensation Awarded: Total — $2,603.20 (pain and suffering, $2,000.00).

Case Study 11 (1975-76)

The applicant, a 17 year-old student, had just completed some shopping when she was approached by two young men who offered her a ride home. She accepted the offer and was beaten and raped en route to her home. She sustained a fractured nose, a chipped front tooth and two black eyes. The principal offender was convicted of rape and sentenced to imprisonment for two years less a day to be followed by a one year probationary period.

Compensation Awarded: Total — $1,135.28 (pain and suffering $800.00).

Case Study 12 (1975-76)

The victim, a 12 year-old boy, was walking to a hockey arena near his home when he was approached by the male offender, who told the boy to get into his car. The victim was then driven to a hockey arena and later to a motel where he was forced to engage in gross sexual indecencies. The boy was then beaten and left in a state of unconsciousness. The offender was convicted of assault causing bodily harm and, according to the Board's report, "was sentenced to 3 years consecutive to two life sentences then being served."

Compensation Awarded: Total — $2,997.40 (pain and suffering, $2,000.00).

Case Study 13 (1975-76)

The 10 year-old victim and her girlfriend (age not given) were lured into the offender's house and subjected to physical and indecent assault. The

offender was convicted on charges of indecent assault and gross indecency. He received a total sentence of five years' imprisonment.

The victim suffered damage to her genital area and emotional trauma. The victim's girlfriend sustained burns to her naval area, welts over the buttocks and damage to the genital area. At the time of the hearing, the child had recovered from her physical injuries, but continued to experience nervous tension.

Compensation Awarded: Total — $1,420.00 (pain and suffering, $1,250.00).

Case Study 14 (1974-75)

The victim, age seven, was indecently assaulted and, although no physical injury was sustained, she underwent a psychiatric examination. The offender pleaded guilty to indecent assault and was given a two year suspended sentence with probation.

Compensation Awarded: Total — $710.00 (pain and suffering, $700.00).

Case Study 15 (1973-74)

The victim, age 15, was brutally assaulted and raped by a casual acquaintance. The offender was convicted of rape and indecent assault; he was sentenced to seven years' imprisonment.

Compensation Awarded: Total — $2,376.00 (pain and suffering, $2,000.00).

Case Study 16 (1973-74)

The victim, age 16, was raped and beaten to death by male persons unknown. The applicant, the father of the deceased victim, received compensation for expenses incurred as a result of his daughter's death.

Compensation Awarded: Total — $497.37.

Case Study 17 (1973-74)

A young girl, 14 years of age, was the victim of a vicious knife attack, wounding and rape. She lost the sight of her right eye as a result of the attack. The offender was sentenced to a total of 12 years' imprisonment on charges of rape and wounding.

Compensation Awarded: Total — $10,331.00 (pain and suffering, $9,500.00).

Compensation Awards in Saskatchewan

Case Study 18 (1983)

The victim was 16 years-old at the time of the incident. Late one summer night, she was raped while staying in an apartment in a Saskatchewan city. She was taken to a hospital, where it was determined that she suffered lower quadrant abdominal pain, severe anxiety and trauma. She was later treated by a chiropractor for multiple subluxations with concomitant muscle contusions to the right cervical muscle and upper right trapezius muscle. The victim recovered from the physical injuries in about one month. Her assailant was convicted of rape and sentenced to three years' imprisonment.

The victim applied for compensation on the grounds of pain and suffering and incidental expenses incurred. The Board made the following award to the applicant, to be placed in trust with the Official Guardian's Office until she reached the age of majority:

Compensation Awarded:

For pain and suffering	$3,500.00
For damaged clothing	72.50
To the applicant's lawyer	100.00
TOTAL AWARD	$3,672.50

Case Study 19 (1983)

The female applicant was 18 years-old at the time of the incident: she was staying with relatives in a Saskatchewan city. In late summer, 1982, at about 1:00 a.m., she was listening to a record at her cousin's house when she was sexually assaulted by him. The applicant was seen by a physician some time later and was diagnosed as suffering from a linear tear to her hymen, in addition to suffering from reactive depression and anxiety. In December, 1982, the applicant underwent surgery to repair the injury to her hymen. According to a psychologist's report, she had made good progress in recovering from the trauma induced by the sexual assault.

The incident was reported to the police by a third party report made by a Rape Crisis Centre in the western province in which the applicant normally resided. To date, no charges have been laid against the assailant.

Compensation Awarded:

For pain and suffering	$4,000.00
For estimated income loss	850.00
For damaged clothes	70.00
For travelling expenses	789.80
Contribution towards telephone calls	100.00
For miscellaneous expenses	30.00
For medical care	155.00
For medical bills	290.00
For legal advice	10.00
TOTAL AWARD	$6,294.80

Case Study 20 (1979)

The female applicant, A.B., was 14 years-old at the time of the incident. In October, 1977, A.B. was employed as a baby-sitter for X, and in the course of her employment stayed at his residence until about 2:00 a.m. one morning when X, X's wife and Y returned to X's residence. X and Y agreed to take the applicant home, but instead drove her to another residence and then to a field several miles outside the city. There she was forcibly undressed and sexually assaulted a number of times before getting out of the car on the pretext of going to the washroom. She then ran away. X and Y attempted unsuccessfully to find her. She eventually found her way back to the highway, was picked up by a passing motorist and taken to a police station.

The victim's father, C.B., made the application on his daughter's behalf. Evidence presented to the Board established that these events had had a severely traumatic effect on A.B.; the attending physician stated that A.B. was more distraught than any of the rape victims he had ever examined. The parents of A.B. testified that she had suffered a great deal of stress as a result of the incident, and had lost her self-confidence and most of her friends. She was depressed for a prolonged period and was extremely nervous about leaving the family home by herself. During the period prior to the criminal trial, she could not work as a baby-sitter and suffered a consequent loss of wages. She began to improve after court proceedings were completed, has since

obtained employment and made some progress towards normalizing her social life. The male assailants X and Y were convicted of rape.

Compensation Awarded:

To A.B., to be paid to the Official Guardian on her behalf for pain and suffering	$5,000.00
To A.B., for lost wages	$ 800.00
To C.B., for pecuniary loss regarding clothes, glasses and incidental medical expenses	$ 200.00
TOTAL AWARD	$6,000.00

Case Study 21 (1979)

In February, 1978, the applicant, a 16 year-old girl, was walking home when a stranger asked her to help him start his car. She refused, but the stranger persisted. As she approached the car, the man pulled out a knife and forced her into his car, where he indecently assaulted and raped her.

A warrant was issued for the arrest of the offender on a charge of rape, but the offender committed suicide before the warrant was effected.

As a consequence of being raped, the applicant became pregnant and underwent a suction curettage during the first trimester of her pregnancy. Medical complications ensued and necessitated a second operation 10 days later. At the compensation hearing, the applicant's parents stated that, although her physical recovery from the ordeal was satisfactory, she continued to suffer from emotional tension and from a generally unstable emotional state.

Compensation Awarded:

To E.F. (the applicant), to be paid to the Official Guardian on her behalf and to be placed in trust until she reached the age of majority	
For pain and suffering	$4,800.00
For medication	20.00
For damaged clothing	138.00
TOTAL AWARD	$4,958.00

Case Study 22 (1977)

This was an application on behalf of A.D., a girl who was 13 years-old at the time of the incident. While she was baby-sitting at the home of a friend, her friend's 23 year-old brother engaged her in conversation. He then grabbed her, threatened her with a knife and compelled her to submit to sexual intercourse. The forced sexual act was repeated several times before the assailant eventually left the premises. A.D. complained to a girlfriend later that evening and told her mother of the incident the following morning. The police were notified and A.D. was taken to a hospital where she was medically examined.

The assailant, G.H., pleaded guilty to a charge of unlawful sexual intercourse with a female person who is under the age of 14 years.

The medical evidence indicated physical injuries consistent with violent sexual intercourse. A.D. was seen on nine subsequent occasions by the con-

sulting physician who reported that she was gradually recovering from a state of extreme nervousnesses and sleeplessness caused by the sexual assault.

In the text of its opinion, the Saskatchewan Board issued the following statement: "The Board views an assault of this nature as a most serious and traumatic incident in the life of an individual, notwithstanding that the physical injury involved was not great. We think such cases call for substantial compensation if the *Criminal Injuries Compensation Act* is to have any meaning."

Compensation Award: The Board awarded a sum of $3,500.00 for pain and suffering, to be paid to the Official Guardian on behalf of A.D.

Case Study 23 (1977)

The victim of this tragic incident was five years-old when she was forcibly sexually assaulted by her biological father. The application for compensation was made by the victim's mother.

The applicant was married to J. in 1959. A daughter K. (the victim of the sexual assault) was born to them in 1961. In the next four years, two other children were born into the family. The parties separated a year later, on the grounds of the cruelty of J. towards his wife and children and because of his sexual advances to the young child K. A few years later the parents were divorced. K.'s mother remarried and relocated herself and her three children with her new husband in a different city.

During the period of her separation from her first husband, the husband came to pick up the children to take them, in accordance with his visitation rights, to see his parents. The next time the mother saw her daughter K. was in the hospital, where she had been taken after being sexually assaulted by her father. The father was subsequently convicted of incest.

During her original stay in the hospital, the child K. was in great pain and severe emotional trauma. She remained in the hospital for six weeks, and later, when she was eight years-old, spent two months in a hospital in a different city. In the interim two and a half year period, she had no bowel control. She underwent a colostomy so that the bowel damage could be repaired; this procedure was then reversed before she was discharged.

Seven years after the sexual assault, K. was psychologically tested. She was still displaying symptoms of anxiety and abnormal fear of darkness and strangers. The Compensation Board stated in its report: "For the first year after the incident, she slept with her mother and was extremely tense and subject to nightmares. She has developed into a very quiet, worried type of person who has a limited social life but is coping reasonably well. She suffers from stomach ulcers. She still has frequent infections and may have to have further surgery on her bowels due to the presence of a fistula. At this time, it is not known whether she will ever be able to bear children, but there is a good chance that she may not. Her mother stated that K. plans to be a nurse. She did not wish to attend the hearing because of the emotional effect it would have on her. She still sees doctors regularly because of infection. In summary, we find that she was most grievously assaulted and should be compensated liberally."

Compensation Award: The Compensation Board awarded K. a sum of $9,000.00 for pain and suffering, to be paid to the Official Guardian on her behalf. An award to K.'s mother of $1,050.00 for pecuniary loss and medical expenses was later withdrawn by the Board, as such payment was, in the circumstances, barred by the Saskatchewan compensation statute.

Case Study 24 (1981)

An eight year-old girl was attacked, forcibly undressed and indecently assaulted by a male person in a deserted garage in Vancouver. The victim and two young friends of hers had been lured into the garage by the assailant on the pretext of looking for a lost dog. At the time of the application, the assailant had not yet been identified.

The eight year-old victim suffered multiple contusions and abrasions, and severe anxiety.

Compensation Awarded: Total—$2,000.00

Case Study 25 (1981)

A 13 year-old girl was attacked, threatened, indecently assaulted, raped and forced to perform an indecent sexual act by a male person in a deserted area near Coquitlam. The assailant was later apprehended and charged with rape.

The victim suffered multiple contusions and emotional trauma.

Compensation Awarded: Total—$3,000.00

Case Study 26 (1979)

A 12 year-old girl was attacked, indecently assaulted and raped by a male person at his residence in a small community. The victim had gone to this residence at the request of the male assailant's family, in order to baby-sit his two children. He later pleaded guilty to a charge of indecent assault on a female.

The victim, as a consequence of the attack, suffered from a severe state of mental anxiety.

Compensation Awarded: Total—$2,500.00

Case Study 27 (1979)

A seven year-old girl, over a period of about two years, was subjected to acts of indecent assault and gross indecency by a male person at several locations, including the assailant's residence in Victoria. He later pleaded guilty to several counts of indecent assault involving this incident as well as assaults on other children.

The seven year-old victim suffered from anal scar tissue, nervousness and mental anxiety.

Compensation Awarded: Total—$6,000.00

Case Study 28 (1978)

A 15 year-old girl was abducted by a man while walking down a street in Vancouver. She was forced into a vehicle, blindfolded, bound with rope, beaten and raped. At the time of the compensation hearing, the assailant, who was wanted by the police in connection with other, similar assaults, had not yet been apprehended.

The victim sustained multiple abrasions and contusions, rope burns, swelling about the wrists, multiple superficial lacerations and trauma.

Compensation Awarded: Total—$3,000.00

Summary

The Committee considers it a matter of fundamental justice that victims of sexual assault be adequately compensated for the full range of injuries and losses they sustain as a consequence of these crimes. We strongly endorse the view put forward by the *Law Reform Commission of Canada* in this context:[6]

> At the basis of any society is a shared trust, an implicit understanding that certain values will be respected . . . A violation of those values in some cases may not only be an injury to individual rights, but an injury as well to the feeling of trust in society generally. Thus, the law ought not only to show a concern for the victim's injury but also take concrete measures to restore the harm done to public trust and confidence . . . Compensation . . . is directed towards the victim and should not be lost sight of as another meaningful and visible demonstration of societal concern that criminal wrongs be righted.

In the Committee's judgment, much more needs to be done to publicize the existence and purpose of compensation boards in each jurisdiction. As documented in the Committee's National Population Survey (see Chapter 6), these public resources are not seen as sources of assistance by most young victims of sexual assault or their families. Likewise, it is significant that in the Committee's national surveys of police forces, hospitals and child protection services, criminal injuries compensation boards were seldom identified or referred to as a potential source of assistance to be contacted. In this regard, one legal commentator has referred to the "almost total public ignorance of the schemes [for criminal injuries compensation],"[7] and this ignorance extends to eligible victims as well. According to the *Canadian Federal-Provincial Task Force on Justice for Victims of Crime*, which presented its Report in June, 1983, "a 1983 Department of Justice survey has found that few victims are even aware of the existence of such programmes."[8]

Clearly, there needs to be much greater public information made available about these compensation schemes if they are to better realize their professed goals, particularly in relation to victims of sexual assault.

Another evident deficiency in the operation of some of these programs is the non-compensability of certain forms of non-pecuniary damages, in particular, damages for pain and suffering. The several case studies cited leave no doubt about the nature of the genuine pain and suffering experienced by young victims of violent sexual assaults and the willingness of the Compensation Boards in Ontario, Saskatchewan and British Columbia, for example, to take these harms into account in awarding compensation.

The Committee considers it essential that the pain and suffering experienced by victims of sexual assault be explicitly recognized in the enabling legislation in each jurisdiction and that this recognition be attended by a substantial increase in the federal-provincial funding of criminal injuries compensation programs in Canada. As Burns has stated:[9]

Finally, we must ask ourselves why we are compensating victims of crimes. If our scheme is enacted to soothe the public or the victim, then how can we justify withholding compensation for pain and suffering? Take the case of a schoolgirl covered by provincial health care who is raped. As a schoolgirl she is probably not working and will not lose any wages, and as an insured person she will probably not incur any significant medical expenses. If we deny her compensation for pain and suffering we end up giving her nothing. This can hardly be said to manifest society's concern for its members, or to help restore those ties which bind society together and which were weakened by the assault.

In the Committee's judgment, without more adequate provincial and federal funding of criminal injuries compensation programs, neither increased public visibility nor wider categories of compensable damages will substantially improve the plight of sexual assault victims of all ages who are injured as a consequence of these crimes. Several of the remedial measures which the Committee recommends have also been advocated by the *Canadian Federal/Provincial Task Force on Justice for Victims of Crime*.

In co-operation with the Department of Justice, the Department of National Health and Welfare, and Provincial and Territorial Governments, the Committee recommends that the Office of the Commissioner:

1. **In conjunction with Recommendation 2 relating to the undertaking of a national program of public education and health promotion, launch a vigorous campaign to inform citizens of the existence and purpose of Criminal Injuries Compensation Boards. This campaign should involve both the communications media and the police, hospitals, child welfare agencies, and other helping services.**

2. **Review the funding of criminal injuries compensation programs and, where appropriate, recommend that the federal and provincial levels of support be increased in order to provide a more appropriate level of compensation for victims of sexual offences.**

3. **This legislation be amended to provide explicitly for awards for physical and emotional pain and suffering to the victim, in order to ensure a more appropriate level of compensation for victims of sexual offences.**

References

Chapter 35: Criminal Injuries Compensation Boards

[1] Statistics Canada/Department of Justice, *Criminal Injuries Compensation 1983* (Ottawa: Supply and Services Canada, 1983) at 3.

[2] *Ibid.*, at 16.

[3] *Ibid.*, at 16-18.

[4] *Ibid.*, at 13.

[5] *Ibid.*, at 93.

[6] Law Reform Commission of Canada, *Restitution and Compensation: Working Paper No. 5* (Ottawa: Supply and Services Canada, 1974) at 17.

[7] Burns, *Criminal Injuries Compensation* (Toronto: Butterworth, 1980) at 124.

[8] *Report of the Canadian Federal-Provincial Task Force on Justice for Victims of Crime* (Ottawa: Supply and Services Canada, 1983) at 34. The Report does not discuss the methodology or specific findings of the 1983 Department of Justice survey.

[9] *Supra*, note 7, at 218-19.

Part VII

Correctional Services

Chapter 36

The Research Record

The Committee's Terms of Reference stipulated that it should examine "the effectiveness of criminal sanctions and methods other than the application of criminal sanctions in dealing with the types of conduct involved in these offences". Following a review of the legal principles of sentencing as these pertain to sexual offences, the findings given in the remaining chapters of this section are taken from the National Corrections Survey conducted by the Committee of 703 convicted child sexual offenders who were in custody or under the supervision (probation or parole) of federal correctional services and those of eight provinces.

The National Corrections Survey was undertaken to complement the findings of the other national surveys in which information was obtained about suspected, known or charged offenders and to provide documentation concerning convicted child sexual offenders, their management and treatment, and their prior criminal record involving sexual offences. The findings of the Committee's several national surveys indicate that convicted child sexual offenders constitute only a small proportion of all persons who actually commit sexual offences against children and youths. Most of the research concerning this group has been based on the documentation of persons on probation, in custody or on parole. There is virtually no documentation about the selective process of winnowing that occurs between the actual occurrence of sexual offences and the conviction of a small proportion of offenders, about whether those who are convicted are more dangerous, or about the effectiveness of the different means used in their management. With respect to these complex and profound questions, the findings obtained in the National Corrections Survey are an earnest of the types of information required to provide a more complete documentation of these issues. The Committee returns to this matter in submitting its recommendations.

The findings in this section are presented in six chapters. In this chapter, a review is given of the methods and general findings of a number of previous advisory bodies and research studies that have dealt with these issues and the design of the National Corrections Survey undertaken by the Committee is described. Prior to undertaking this survey, the Committee, as part of its general review of the research literature on sexual offences against children and

youths, identified a number of research reports documenting Canadian experience with the management and treatment of convicted child sexual offenders. These studies constituted a necessary and useful starting point for the Committee's review. However, none of the studies contained a comprehensive and detailed assessment of who these offenders were and how they had been handled by correctional services. In order to obtain information about a broader cross-section of convicted child sexual offenders, the Committee undertook its national survey with the co-operation of federal and provincial correctional services.

A legal review of the general principles of sentencing as these pertain to sexual offences is given in Chapter 37, *Sentencing*. In this chapter, factors influencing the nature and length of sentences are considered, and in the chapters that follow, findings are presented concerning some of the circumstances which are taken into account on sentencing. These factors include, among others: the gravity of the offence; the ages of victims and offenders; the previous criminal record of the accused; the use of violence in committing the offence; the nature of the injuries sustained by victims; and gang sexual assaults.

In Chapter 38, *Convicted Offenders*, a description is given of the social background of convicted child sexual offenders. The Committee found in its review of the research literature that there was little consensus about who these offenders were, about their management, about the extent of their previous criminal record, or about the likelihood of their committing similar acts in the future. In order to provide a comparative baseline, where similar information is available from the other national surveys conducted by the Committee about suspected or charged offenders, these findings are drawn upon.

In Chapter 39, *Treatment*, available findings are given concerning the counselling and therapy that are provided for these convicted offenders. Across Canada, there is not a uniform policy with respect to whether medical, psychiatric and psychological assessments are kept separately for purposes of confidentiality from correctional management records or whether both types of information are stored together. For these reasons, the information on the treatment of convicted child sexual offenders obtained by the Committee is incomplete. In order to have assembled such information from all offenders included in the survey, it would have been necessary to have obtained the signed consent of each convict, a requirement which was not feasible in terms of the schedule and resources available to the Committee.

In Chapter 40, *Recidivism*, findings are given concerning the previous criminal records of convicted child sexual offenders and whether the offences occurred when they were minors or adults. On the basis of whether offenders were currently sentenced for homosexual or heterosexual offences against children, findings are given in relation to whether they had no previous criminal record, had committed only non-sexual offences in the past, or were known to have committed two or more sexual offences.

In Chapter 41, *Dangerous Sexual Offenders*, a review is given of all offenders having this designation whose victims were children or youths. A comparison is made between offenders having this classification and all other male convicted child sexual offenders for whom information was obtained in the survey.

Federal Inquiries

During the past half century, four major national inquiries have been appointed to investigate different aspects of correctional services operating under federal jurisdiction. While none of these advisory bodies dealt directly with convicted offenders having children and youths as victims, their recommendations led to a number of legislative amendments to the *Criminal Code* which affected the classification and management of convicted child sexual offenders. These reports also called for a re-structuring of correctional services, a more complete assessment of offenders and the provision of treatment services.

1. *1938 Royal Commission to Investigate the Penal System of Canada* (Archambault Report).
2. *1956 Committee to Inquire into the Principles and Procedures followed in the Remission Service* (Fauteux Report).
3. *1958 Royal Commission on the Criminal Law relating to Criminal Sexual Psychopaths* (McRuer Report).
4. *1969 Canadian Committee on Corrections* (Ouimet Report).

The 1938 *Archambault Report* undertook an extensive review of federal correctional services.[1] The Commission drew its information from an assessment of historical crime statistics, and in the instance of recidivism, it undertook a review of 188 incarcerated offenders having 10 or more convictions. No information was given in this Report concerning victims or the nature of offences previously committed by offenders.

On the issue of 'habitual' offenders, including those committing sexual offences, the Commission characterized these prisoners as "the costly worthless dregs of society, for whom no adequate arrangements have been provided in Canadian prisons."[2] The Report recommended special legislation in relation to these offenders, that special prisons be established for their custody, that they receive thorough medical assessment and treatment, and that "accurate statistical information" be assembled to permit assessment of "recidivism, the success or failure of probation, ticket-of-leave or parole and other kindred matters".[3]

Appointed by the federal Department of Justice, the 1956 *Fauteux Report* recommended the repeal of existing statutes concerning determinate plus indeterminate sentences and that a new approach be adopted towards the parole of convicted offenders.[4] The Report concluded that the application of

provisions relating to habitual offenders was not "uniformly or frequently employed"[5] and that "appropriate arrangements should be made ... for the uniform enforcement, in all provinces, of the provisions of the *Criminal Code* relating to habitual criminals and criminal sexual psychopaths".[6]

On the question of sex offenders, the Committee recommended medical research concerning efficacious treatment and the establishment of separate prison — medical centres which would serve the special needs of these and other designated types of offenders. "The problem of the sex offender is [equally] difficult ... When such a crime occurs many proposals, some of them hysterical, are advanced for the solution of the problem. Medical science is still uncertain as to the kind of treatment that may be effective, but it is obvious that effective treatment can only be discovered if such persons are made the subjects of special study. We feel that sex offenders should be removed from the normal prison population and that intensified research on the problem should be carried out".[7]

The main empirical findings of the 1958 *McRuer Report* were based on statistical information assembled by the R.C.M.P. on 3110 convicted sexual offenders and an analysis of 23 incarcerated "sexual psychopaths".[8] While no separate assessment was made of convicted child sexual offenders, the information provided indicated that 43.2 per cent of the victims of the 3110 sexual offenders were children age 13 years and younger (65.7 per cent, girls; 34.3 per cent, boys).

The main conclusions of the 1958 Royal Commission in relation to recidivism and offences involving the use of violence were that: "recidivism is not prevalent among the sexual offenders generally"; and "we find no evidence that the sexual offender tends to progress from a less violent to a more violent crime".[9] These conclusions do not accord well with the documentation given in the Report. No comparative baseline was given which permits an assessment of the level of sexual recidivism with other types of offenders having prior criminal records. In addition, these observations were made in light of charges laid, a source of information which by itself is insufficient to determine the elements of offences, whether violence occurred, or if there is a progression from minor to serious crimes. If these limitations are disregarded, in the view of this Committee, the statistics given in the Report of the 1958 Royal Commission indicate that the level of sexual recidivism for certain types of offenders cannot be set aside as not being prevalent or that there is no progression in the types of crimes committed by recidivists. The statistics in the Royal Commission's Report indicate that following a first conviction, 19.6 per cent of offenders who were initially convicted of indecent assault on a female and 69.6 per cent of those who were initially convicted of indecent assault on a male were subsequently convicted of rape, buggery or gross indecency, or attempts to commit these types of offences.

The recommendations of the 1969 *Ouimet Report* reiterated several of the main concerns identified by earlier federal inquiries dealing with convicted offenders.[10] The Report called for the more uniform application of provisions in

the criminal law, the repeal of statutes pertaining to dangerous sexual offenders which it recommended should be replaced by dangerous offender legislation, and the mounting of extensive empirical studies concerning recidivism, treatment and sentencing of these offenders.

The Committee's research on these issues focussed on 80 incarcerated habitual offenders and 57 dangerous sexual offenders. In the analysis of the former group, no break-down was given of the proportion of convicted 'habitual' *sexual* offenders (the number of offences was listed); the appraisal of the latter group was limited to a brief review of existing legal provisions and the geographic distribution of locations where these offenders had been sentenced. No information was given concerning the ages of sexual offenders, the nature of the crimes committed, and the ages and sexes of their victims. In addition, no comparison was made between these offenders and other convicted sexual offenders who on sentencing had not been designated habitual or dangerous offenders. The paucity of empirical evidence assembled by the 1969 *Ouimet Committee* concerning these issues, however, did not serve to constrain it from concluding that "the present basis upon which a person may be found to be a dangerous sexual offender is inadequate" and that "the present legislation does not protect society against the offenders from whom society requires maximum protection".[11] These observations were made in the notable absence of reasonably sufficient documentation.

The findings of the four main federal inquiries that have dealt with convicted offenders do not provide a baseline with which a comparison can be made with the information obtained in the National Corrections Survey conducted by the Committee. These earlier national studies dealt with offenders having sentences of two years or longer who were in custody or under supervision of federal correctional services. None undertook a review of these offenders in relation to those having shorter sentences. Relying on official statistics, no information is given in the Reports of these federal inquiries concerning the elements of the offences committed, the circumstances of the offences and about the victims of offences.

Since the tabling of the 1938 *Archambault Report*, the several principal federal inquiries dealing with correctional services have reiterated a number of concerns about which no action has been taken that is congruent with the intentions of the recommendations submitted. The reports of these investigations have called, for instance, for more detailed and adequate official statistics, for comprehensive research on the efficacy of different means of assistance and treatment, and for a full assessment of recidivism in relation to the types of offences committed, sentencing decisions and the utility of different supervisory or custodial arrangements provided for convicted offenders.

The authorities receiving these reports have been impervious to these recommendations submitted by federally appointed inquiries. There is no published report for Canada that presents nationally assembled empirical findings

concerning the treatment and recidivism of convicted offenders, or of convicted sexual offenders. Even for the small group about which the most extensive documentation is available — habitual, dangerous and dangerous sexual offenders — no report has provided a reasonably sufficient or comprehensive assessment of these criminals.

In its recommendations given elsewhere in this Report, this Committee reiterates issues which have been cogently proposed by earlier federal investigations. There can be no doubt that more complete documentation concerning these issues is both feasible and warranted, and could serve as a requisite basis of assessing how better protection could be afforded victims of crime.

Previous Research Studies

In its review of available Canadian research reports, the Committee found that, for virtually each issue which was considered, even in relation to providing a basic description of who convicted child sexual offenders were, the findings were sharply contradictory.[12-58] This apparent confusion is largely accounted for by the fact that different definitions have been used, that different types of offenders have been studied, and that different sources of information have been drawn upon. In addition, these studies have typically reported findings about small numbers of offenders, often those who were incarcerated in a single institution.

The definitions adopted about who these offenders are have varied widely. It has been a common practice in these studies to draw upon the information stored in correctional management systems, some of which do not contain centrally computerized records about victims. There has been no common denominator in this research in the selection of offenders in relation to the ages of their victims. The selection of sharply different age levels of victims has served to include or exclude certain types of offenders, particularly in relation to those having committed certain types of sexual offences. These age listings are generally truncated with the experience of older adolescents having been excluded, although by law, there may be no specified age limit (e.g., incest) or special protection may be afforded persons who are under age 21. Almost without exception, these research studies have ignored the various age levels specified in the sexual offences in the *Criminal Code*.

The information about convicted child sexual offenders has come from a variety of corrections — related sources, each of which has predictably yielded somewhat different information about these offenders. A majority of the studies have relied upon the federal correctional system with the result that only the experience of offenders having sentences of two years or longer has been documented. (Conversely, but less often, only the experience of offenders in a provincial correctional system may be considered). Still other sources of information, each of which sharply affects the type of information obtained, have included: persons on probation; pre-sentencing reports; persons referred for

psychiatric assessment who may be either in or out of custody; and persons on parole.

Generally, Canadian research studies have dealt with the experience of only small groups of convicted child sexual offenders (this is equally true of studies of all types of convicted sexual offenders.) It is an anomaly that the most extensive survey, that by C.A. Searle of 495 convicted sexual offenders in federal custody, is an unpublished report. This limitation may be partially accounted for by: researchers having been associated with a single institution in which only a small group of offenders was incarcerated; the time and resources required by external researchers in order to be able to mount larger studies; and the complexity of the organization of correctional services which involves different jurisdictions, incomplete documentation about victims, and the requirement that access be granted to information contained in different record-keeping systems. The small denominators of the groups studied in these studies serve to limit sharply the nature of the generalizations that can be derived.

There is general agreement in the research literature that, on average, most of these offenders are relatively young men. Beyond this fact, however, the findings are ambiguous concerning their family backgrounds, their educational and work experience, their prior contacts with children or their marital status. In some reports, it has been found that most offenders had not used alcohol or drugs; in contrast, other studies have concluded that a majority had been frequent users of these substances.

Because of its mandate, the Committee was particularly attentive to the findings of previous research concerning: the extent to which convicted sexual offenders were known to have physically injured victims; the types of counselling and therapy provided them and what was known about the efficacy of these services; and on the basis of their previous criminal records, to assess reported trends in relation to recidivism. The findings from available research studies on each of these issues are inconclusive.

In a number of widely cited studies undertaken in Canada, the United Kingdom and the United States, it has been concluded that child sexual offenders rarely, if ever, physically injure victims. On the basis of these findings, alternatives other than imprisonment have been recommended as the most effective means of handling these cases. The options proposed have varied, but such recommendations commonly advocate probation coupled with counselling, treatment and a re-alignment of the offender's living conditions. Contrasting with the conclusion that few of these offenders are dangerous are the findings of a number of recent studies which have found that between half and three in five convicted offenders had physically hurt victims and that a substantial proportion had previous criminal records.

In recent years, there has been a strong and growing tendency in some quarters to regard child sexual offenders as being unassertive, weak and inadequate persons who are more likely to be in need of counselling and assistance

than receiving the double punishment of being convicted and, if imprisoned, the harsh penalties meted out by other inmates. In this respect, it has been variously proposed that these offenders, preferably following their initial detection or before sentencing occurs, should be given a psychological and/or psychiatric assessment, and that in the recommendations given on sentencing, counselling and treatment should be incorporated as integral elements of their subsequent management.

Usually without the benefit of control groups serving as a basis for comparison, it has typically been concluded in the psychological and psychiatric research on sexual offenders that most of these offenders suffer from character and behaviour disorders with only a small proportion known to have some form of severe mental illness. Several studies have concluded that group therapy and behaviour modification (including aversion therapy) have been effective in controlling deviant sexual urges, in modifying sexual preferences, or in improving the well-being of offenders in other ways. On the basis of a review of a number of the main reports on this issue, V.L. Quinsey has noted:

> "Few studies that compare different treatment techniques have appeared and comparative studies which involve follow-up data are almost non-existent."

The research on the recidivism of child sexual offenders yields a wide range of estimates. The most commonly cited rates are between five and 15 per cent, but an upper limit has been reported in some studies of up to one in two offenders. Because of the ethical and procedural difficulties involved, prospective studies have seldom been attempted. The Achilles' heel of retrospective studies is the accuracy of the information obtained about the true extent to which sexual offences may have been committed in the past. As is the case for most of the other research findings about convicted child sexual offenders, the wide variation in the reported rates of recidivism can be attributed to the different sources of information drawn upon and, at least for Canada, the fact that most studies have relied upon the experience of relatively few offenders. This important information has not been available for Canada with the result that there is no firm or clear-cut documentation of the long-term consequences of the different sentences imposed by courts.

In addition to the limited utility of studies dealing with rates of sexual recidivism, relatively little is also known about whether those persons who have committed more than one offence are likely to commit similar acts again, about whether there is a progression from minor to more serious offences, or about whether, with age, some offenders may 'burn out' and cease to commit further offences regardless of the types of sentences imposed. Each of these possibilities, none of which is sufficiently documented, has been suggested in the research literature.

In recent years, legislation has been enacted in relation to habitual offenders, dangerous sexual offenders and dangerous offenders; as noted, persons so designated have been the subject of several federal inquiries. None of these

investigations has dealt specifically with offenders having children as victims. The Committee is not informed of any Canadian national study that has compared dangerous sexual offenders having children as victims with other types of convicted child sexual offenders (dangerous or otherwise). In this regard, it appears to be generally assumed, although it is undocumented, that proportionately more of the former than the latter group have physically injured victims, have committed more serious offences, and are more likely to be psychopathic. The presumed assumption of the special provisions pertaining to dangerous offenders is that the general offences in the *Criminal Code* do not afford sufficient protection for Canadians from these vicious criminals. In relation to the Committee's mandate, however, it is unknown how many convicted child sexual offenders not having this special designation may have committed similar acts, used coercion, or may have physically injured victims. Although a majority of the victims of dangerous sexual offenders are children and youths, the utility of this legislation as a means of affording children better protection has not been documented.

Canadians are deeply concerned about the need for adequate protection for children against sexual offences. Despite this fact, the Committee found in its review of the main research reports dealing with convicted sexual offenders that the available research is fragmentary, the principal findings are inconclusive and contradictory, and the utility of the recommendations proposed is limited due to the small size or the special nature of the groups studied. When the Committee undertook its review, there was no national assessment available concerning convicted child sexual offenders.

The Committee's review of the main research reports on these offenders indicates that there is a need for more extensive and indepth information to be assembled on a routine basis about their backgrounds and their management while in custody or under supervision, and that long-term prospective study is warranted in relation to assessing the consequences of different sentences imposed by courts as these may affect rates of recidivism.

Design of Survey

With the co-operation of the Correctional Service Canada and correctional services in eight provinces and the Yukon, information was obtained concerning 703 convicted child sexual offenders. Prior to the collection of information, a research protocol was developed and pretested using a number of federal and provincial correctional files. At this stage, valuable assistance was provided by a number of senior federal and provincial correctional officials who reviewed the initial and penultimate drafts of the research protocol and who facilitated the collection of information.

The research protocol was developed to assemble information in relation to: the *social characteristics* of convicted child sexual offenders, their victims, the offences committed, and the circumstances involved in the occurrence of

the offences; *recidivism* in relation to previous charges and convictions; and the *treatment* received by convicted offenders from physicians, psychologists, social workers and other professional personnel. In order to permit comparison of the findings to be assembled in the survey with those of the Committee's other national surveys, wherever it was appropriate and feasible in relation to available information, a similar means of classification was adopted. Because of the type of information being sought, the sources drawn upon included the institutional files of incarcerated offenders and the records of those on probation and parole.

In the National Corrections Survey, a convicted child sexual offender was defined in relation to: the types of sexual offences committed as these were then designated in the *Criminal Code*; and the age(s) of the victim(s). The date selected for the identification and selection of incarcerated or supervised convicted offenders was February 1, 1982. If an offender had been convicted of one of 22 sexual offences (including designation as a 'dangerous offender') and was under supervision on the cut-off date, then he or she was identified for possible inclusion in the survey. Offenders were identified on the basis of whether they had been convicted of one or more of the 22 offences listed in Table 36.1.

In the review of incarcerated and supervised offenders in the federal correctional system, five separate listings were undertaken to ensure that all such known offenders would be identified. The specific listings generated were:

1. All *incarcerated* offenders who had a *major offence* that was sexual in nature. A major offence was defined as:

   > "The offence for which the inmate was given the longest sentence. If more than one offence awarded the same sentence, the major offence is the most serious one, as measured by the maximum penalty allowed by the law. If more than one offence carries the same maximum penalty, the major offence is the first of these listed on the first Warrant of Committal. The major offence may differ from the admitting major offence because of events happening after admission."

2. All *incarcerated* offenders who had a *secondary offence* that was sexual in nature.

3. All *supervised* offenders who had a *major offence* that was sexual in nature.

4. All *supervised* offenders who had a *secondary offence* that was sexual in nature.

5. All offenders who were *Dangerous Sexual Offenders*. The category Dangerous Offender includes those offenders classified as Dangerous Sexual Offenders, Habitual Offenders with a sexual offence, and Dangerous Offenders with a sexual offence.

The second criterion used in the selection of convicted child sexual offenders was the age of the victim(s) involved in the current conviction(s). To ensure that inclusion of all offenders who had committed sexual offences specified in

the *Criminal Code*, the age adopted for the inclusion of victims was 20 years-old or younger.

Table 36.1

Sexual Offences Used as the Basis for the Selection of Convicted Child Sexual Offenders

Section of Criminal Code	Type of Offence
S. 143	• Rape
S. 145	• Attempt to commit rape
S. 146(1)	• Sexual intercourse with female under 14
S. 146(2)	• Sexual intercourse with female who is 14 years of age or more and is under the age of 16
S. 148	• Sexual intercourse with feeble-minded
S. 149(1)	• Indecent assault on female
S. 150(1)	• Incest
S. 151	• Seduction of a female who is age 16 but under age 18
S. 152	• Seduction under promise of marriage
S. 153(1)(a)	• Sexual intercourse with step-daughter, foster daughter, or female ward
S. 142(1)(b)	• Illicit sexual intercourse with a female person of previously chaste character and under the age of 21 years
S. 155	• Buggery or bestiality
S. 156	• Indecent assault on male
S. 157	• Acts of gross indecency
S. 166	• Parent or guardian procuring defilement
S. 167	• Householder permitting defilement
S. 168(1)	• Corrupting children
S. 169	• Indecent acts
S. 688 (after October 15, 1977)	• Dangerous offender
S. 193 (1)	• Keeping a common bawdy house
S. 194	• Transporting person to a bawdy house
S. 195	• Procurement
J.D.A. s. 33	• Contributing to juvenile delinquency

When the survey was undertaken, the findings obtained in relation to 703 convicted child sexual offenders included a sizeable proportion of all such offenders. For several reasons, however, the group studied does not constitute a sample nor is it all-inclusive. While it had initially been intended to obtain such information from all jurisdictions, this proved not to be feasible. No findings were obtained for convicted offenders who were in provincial custody in Saskatchewan and Quebec. For the former province, agreement was reached to proceed with the survey, but other circumstances intervened resulting in a postponement in the collection of information. When it was feasible to do so, the Committee's cut-off date for the collection of research information had passed. In the instance of Quebec, while the provincial Ministry of Justice had effectively participated through le Comité de la protection de la jeunesse in the

National Child Protection Survey, unforeseen factors precluded a collaborative study from being undertaken in relation to convicted child sexual offenders. The Quebec Ministry of Justice was most co-operative in providing general statistics from its computerized records.

There is no central inventory for Canada, except for the register of homicides, of convicted offenders. If information on criminals convicted of particular crimes is sought, then this information must be obtained separately from each jurisdiction concerned — federal, provincial and territorial.

The main information retained in corrections, probation and parole records is offender, not victim-oriented. Only a few jurisdictions can efficiently identify information about the victims of crime. When the survey was conducted, information about convicted offenders accessible on a computerized basis was available in only four of 10 jurisdictions participating in the study (Government of Canada, eight provinces and the Yukon). In other jurisdictions, the identification of particular types of criminals must be made by means of a direct search of records, and as the Committee learned, these may be stored centrally, regionally, or be retained at corrections or supervisory locations. Where these records are maintained regionally, it is necessary to visit regional offices to assemble information about offenders. In instances where records are retained at local institutions, permission is required involving their recall to a central and/or regional location.

In each participating jurisdiction, the full co-operation of senior correctional officials was afforded; it is believed that all known cases of convicted child sexual offenders were identified. However, as some offenders may have been charged and convicted of other offences (e.g., break-and-enter) yet have committed a sexual offence, there is no surety that all such convicted offenders were in fact identified. Following the identification of this group, the Committee learned of another dilemma in relation to the identification of persons convicted of sexual offences against children. This problem, which is characteristic of the system of correctional services in Canada, is perhaps best exemplified by considering the information available about that group considered to have committed the most serious crimes — dangerous sexual offenders.

The Committee obtained access from the Correctional Service Canada to the files of all 'dangerous' offenders convicted of having committed sexual offences who were under supervision on February, 1982. Of 84 such cases, a detailed review indicated that information on the age of the victim was unknown for about one in eight (13.3 per cent). This review included both an assessment of the main dossiers and attached subsidiary files (e.g., police general occurrence records, transcripts of court decisions, pre-sentencing reports). In instances where information concerning age was missing, the victims were variously referred to as a "child", "toddler", "teenager" or "young person". Upon undertaking a detailed review of records in the jurisdictions where all convicted sexual offenders had been identified, the Committee found that the proportion of cases in which the age of the victim was unknown or could not be

accurately identified in correctional files ranged between 0.0 per cent to 59.3 per cent.

An additional reason why the group of 703 convicted child sexual offenders does not constitute a sample is that while in seven of 10 jurisdictions, information on all identified cases was obtained, in the remainder due to time constraints imposed by the Committee's schedule, it was not feasible to assemble information on all identified cases; in two instances, retrieval from a number of widely scattered regional and/or local offices imposed operational constraints.

The Committee recognizes the limitations inherent in the information obtained in the National Corrections Survey. Although complete information was obtained in seven of 10 jurisdictions for all known convicted child sexual offenders, even here there is no surety that all offenders who had committed sexual offences were identified. The information that was obtained, however, constitutes a sizeable group of those convicted child sexual offenders who were in custody or under supervision in all parts of Canada when the survey was undertaken. (The federal system includes convicted offenders from all provinces and territories). The information obtained about the 64 dangerous child sexual offenders is inclusive of all such persons who on sentencing were found to be dangerous.

The Committee accepts the findings of the survey as likely being representative of a substantial proportion of all convicted offenders who were in custody or under supervision at the cut-off date set for the identification of cases in the National Corrections Survey. In the Committee's judgment, the survey's findings afford a sufficient basis permitting comparison between this group and suspected or known offenders identified in the Committee's other surveys.

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Chapter 37

Sentencing

One of the most difficult tasks faced by Canadian judges is determining the appropriate sentence that an offender should receive on being convicted of a criminal offence, especially where the offence is of a sexual nature. This chapter reviews the general principles of sentencing in Canadian law and their application to adult offenders convicted of sexual offences. The unique circumstances of the offender and, to a lesser extent, of the offence he or she commits, underscore the importance of viewing sentencing as an individualized, human process.[1] Canadian courts tend to consider several objectives in sentencing an adult offender and the weight accorded to each will vary according to the circumstances of both the offender and the offence. There are four overarching sentencing objectives recognized by Canadian law:[2]

1. The protection of the public.
2. Retribution or punishment.
3. Deterrence.
4. The reformation and rehabilitation of the offender.

These general principles are not mutually exclusive; for example, it is often stated by judges that the "protection of the public" can best be achieved by a sentence that will promote the offender's reformation and rehabilitation. Canadian jurisprudence on sentencing suggests rather that these principles need to be "wisely blended"[3] in reaching an appropriate conclusion with respect to sentence. As the Nova Scotia Court of Appeal has noted:[4]

> [T]he relative weight or mix of the three basic factors — deterrence of the offender, deterrence of others, and rehabilitation and reform — varies not only with reference to the nature, history and character of the offender, but also with the kind of offence. And to the mixture in any given case must often be added a fourth factor . . . , namely, the need to express social repudiation and abhorrence of a particular crime by, to use a largely outmoded word, "punishment" of the offender.

Protection of the Public

According to one legal commentator, it is well accepted by Canadian courts that the principal purpose of the criminal law process, and hence of sentencing, is the protection of the public.[5] "Public protection" has many aspects:[6]

> If the defendant is imprisoned, he is removed from society at least temporarily, and the community is protected. Even if he is subjected to a program of rehabilitation by probation or otherwise, the ultimate aim is to protect society by making the defendant a responsible member of his community, thereby preventing his causing harm to society.

There are, however, cases in which the objective of public protection demands a sentence of extended incarceration, particularly where the offender committed a violent sexual assault.[7] The protection of the public as a primary sentencing objective takes its most stark form in the "dangerous offender" provisions of the *Criminal Code*, which authorize the indefinite detention of certain classes of offenders, including so-called "dangerous sexual offenders."

Retribution or Punishment

The concept of retribution (namely, that a crime should be punished[8] and that the punishment should fit the crime[9]) plays an important role in determining the range of sentences for a particular type of offence.[9] That retribution does not imply societal revenge[10] is evident from the Ontario Court of Appeal's decision in *R. v. Warner*:[11]

> It should be said at once that the purpose of punishment for crime is not that, through the medium of a judge who is authorized by the law to impose it, vengeance may be wreaked upon the guilty for their crime, as though crime was private in character ... Punishment ... is the expression of the condemnation by the State of the wrong done to society. There must, therefore, always be a right proportion between the punishment imposed and the gravity of the offence. It is in that sense that it is said that certain crimes "deserve" certain punishments ...

Where, however, an offender seriously violates fundamental social values, for example, in cases involving sexual offences against children, the offender's sentence will often be determined in a manner that expresses society's abhorrence and denunciation of the offenders conduct. In *R. v. W. and B.S.*,[12] the accused were convicted of several sexual offences which took place in the presence of, and sometimes with the participation of, two children aged eight and 13. The Ontario Court of Appeal, in imposing sentence, stated that "in such cases, the sentences should reflect fairly both the revulsion of society and its condemnation of conduct such as that displayed."[13]

Deterrence

Deterrence as a sentencing objective has two, sometimes conflicting, aspects: specific deterrence, in which the sentence is formulated in the hope of deterring the offender from committing further offences; and general deterrence, which is premised on the view that the sanction an offender receives for his or her conduct should also be such as will deter others from emulating that conduct.

The aim of specific deterrence as a sentencing consideration is the imposition of a punishment on the offender which will deter him or her from committing a future crime. In assessing what sort of sentence will meet the aim of specific deterrence, the court should have regard to the individual offender, his or her prior criminal record, his or her attitude, and his or her prospects for reformation and rehabilitation.[14]

The objective of general deterrence is to deter others from emulating the conduct of the criminal offender, by demonstrating to them the nature of the sanction they can expect if they follow his or her example.[15] The theory of general deterrence is based on companion assumptions: first, that an offender's sentence will become known to those who might be tempted to engage in comparable criminal conduct and, second, that appreciation of this risk of punishment will thereby have an inhibiting effect on criminal activity.[16]

There is little evidence of the validity of general deterrence, concerning either the kinds of crime that can be deterred or the sorts of potential offenders that are amenable to the general threat of punishment.[17] Even so, general deterrence has been adopted by Canadian courts as one of the primary aims of sentencing. In *R. v. McKeachnie*,[18] for example, the Ontario Court of Appeal held (in a case involving an indecent assault on a young girl) that deterrence is the primary consideration where sexual offences against young children are concerned, and that the protection of the public is best secured by such an approach. The principle of general deterrence has also been considered of primary importance in sentences imposed for rape,[19] attempted rape,[20] indecent assault on a female,[21] sexual intercourse with a female under 14[22] and incest.[23]

Rehabilitation

Canadian courts sometimes give precedence to the objective of rehabilitation of the offender when imposing sentence. Even so, the cases in which the offender's rehabilitation has been considered the paramount sentencing factor have not established general principles in this regard. Whether this approach is taken will depend on the circumstances of each case, and particularly on the court's assessment of an offender's prospects for reform.

The sentencing judgment in *R. v. Robertson*,[24] a case of homosexual pedophilia, is illustrative. The accused pleaded guilty to two counts of gross indecency and to one count of indecent assault on a male. He had sought psychiatric help prior to the commission of these offences, but had discontinued his treatment. At trial, the accused was sentenced to eight months' imprisonment. On appeal to the Ontario Court of Appeal, a sentence of time served (10 days) plus two years' probation was substituted. In substituting this sentence, the Court of Appeal emphasized the accused's evident rehabilitative prospects:[25]

> It was urged upon us by the respondent that a term of imprisonment was needed to demonstrate the revulsion of the public for this type of offence and as a deterrent to this man and others like him . . . .In our view, jail adds little by way of deterrence to persons with this type of propensity.
>
> The important thing in this case is that there was a very positive pre-sentence report and medical report before the Court, and that report was to the effect that it was probable that through the medical treatment outlined in the document the appellant could be cured. This offered the base assurance to the community for its protection which is the primary purpose of the criminal law.

Rehabilitation is often the guiding sentencing consideration with respect to first offenders, particularly youthful first offenders. In these cases, the aim of rehabilitation is a factor both in deciding whether a custodial term will be imposed and in determining the appropriate length of the term of imprisonment.

Nature and Length of the Sentence

In determining the sentencing objectives in a given case and the appropriate sentence in light of these objectives, Canadian courts typically consider a variety of factors arising from the circumstances of the offence. The Manitoba Court of Appeal has formulated a list of considerations which should be canvassed in imposing sentence:[26]

- The degree of premeditation involved.
- The circumstances accompanying the commission of the offence: the manner in which it was committed, the amount of violence involved, the employment of an offensive weapon and the degree of active participation by each offender.
- The gravity of the crime committed, of which the maximum punishment provided by statute is an indication.
- The attitude of the offender after the commission of the crime, as this serves to indicate the degree of criminality involved and throws some light on the character of the participant.
- The previous criminal record, if any, of the offender.
- The age, mode of life, character and personality of the offender.

- Any recommendation of the trial judge, any pre-sentence or probation officer's report, or any mitigating or other circumstances properly brought to the attention of the court.

These sentencing factors tend to fall within two sub-groups: those pertaining to the offender and those pertaining to the circumstances of the offence under consideration.

Sentencing Factors Pertaining to the Offender

Age

In the majority of cases, the offender's age influences the nature of the sentence imposed, particularly in regard to youthful offenders. The offender's age is especially pertinent to the court's determination of whether a custodial sentence should be imposed. According to one legal commentator, "the most common effect of youth of the offender is to indicate that individualized treatment will be appropriate. General deterrence is de-emphasized in sentencing youthful offenders: The preferred aims are rehabilitation and individual deterrence."[27]

Even so, the generally mitigating effect of the offender's youthful age may be outweighed by other considerations arising from the nature of the offence committed. If the offender, although young, has a lengthy criminal record for similar offences or the offence in question involved violence or the use of a weapon, the offender's youth will have a weaker mitigating effect on sentencing than otherwise.

Previous Criminal Record

One of the most significant mitigating factors in sentencing is the offender's lack of a prior criminal record. It is well established that the accused's character prior to the commission of the offence may be considered at the sentencing stage;[28] accordingly, where the offender has not been convicted of prior criminal offences, the court typically is disposed to treat him or her more leniently than the circumstances of the offence may appear to warrant. That the court will tend to lean towards the imposition of an individualized as opposed to a "tariff" punishment[29] is illustrated by the comments of the Ontario Court of Appeal in *R. v. Stein*,[30] in which Mr. Justice Martin stated that:

> . . . .before imposing a custodial sentence upon a first offender the sentencing Court should explore the other dispositions which are open to him and only impose a custodial sentence where the circumstances are such, or the offence is of such gravity that no other sentence is appropriate.

Where less serious offences are concerned, for example, the offence of "indecent act", the offender's lack of a prior criminal record will sometimes

result in the offender being discharged either absolutely[31] or on conditions of probation. In offences involving more serious criminal infractions, the absence of a prior criminal record will not prevent the imposition of a custodial sentence in appropriate cases, but will usually effect the length of the imprisonment imposed.[32] That an offender's prior criminal record should generally be taken into account, and accorded a weight appropriate to the circumstances of the offence in question, is an accepted sentencing practice in Canada.[33]

Mental Illness

Where an offender suffers from mental illness (short of the legal definition of insanity),[34] this may have either an aggravating or a mitigating effect on the sentence imposed. Apart from the "dangerous sexual offender" provisions in the *Criminal Code*, an accused's evident mental disorder will often result in the imposition of a more severe sentence. For example, in *R. v. D.*,[35] the accused raped his two step-daughters under circumstances described by the court as "savage, terrorizing and approaching stark horror". The accused had a prior conviction for incest and had been diagnosed as having a severe personality disorder. The court imposed sentences of 12 years' imprisonment on each count of rape, the sentences to run concurrently.

Where a court sentences an individual to a term of imprisonment, it cannot order that the offender receive treatment for a personality disorder while he or she is incarcerated. The court can only recommend to the correctional authorities that the offender receive such treatment.[36]

The offender's mental illness is more likely to be regarded as a mitigating factor in sentencing where it appears to the court that there is a real possibility that the offender can be rehabilitated through treatment. The sentencing judgment in *R. v. D.*[37] is illustrative. The accused pleaded guilty to two charges of indecent assault on a female. He had a history of mental disorder and showed an apparent need for psychiatric help. In sentencing the accused, the Nova Scotia Court of Appeal directed that he be placed on probation for two years, and that he undergo psychiatric treatment as a term of probation.

A similar approach was adopted by the Ontario Court of Appeal in *R. v. D.*,[38] a case involving indecent assaults on young girls. Prior to these offences, the accused had voluntarily sought treatment for his disorder, namely, heterosexual pedophilia. Evidence before the court indicated that continued, non-custodial treatment of the accused would likely effect a cure of his disorder. Accordingly, the Court varied the custodial sentence imposed at trial to a sentence of time served and a two year probationary period, with a condition that the offender continue to undergo psychiatric treatment.

Mental Retardation

An offender's mental deficiency or retardation will usually act as a mitigating factor in sentencing, unless it is such as to render him or her a continuing and serious threat.[39] In *R. v. S.*,[40] for example, that the 17 year-old male accused had a mental age of only 12 largely accounts for the court's leniency in imposing a sentence of two months' imprisonment and 18 months' probation for his offence of indecent assault on a female. That the accused undergo psychiatric treatment was a condition of his probation.

Entry of a Guilty Plea

The offender's plea of guilty will normally be regarded as a mitigating factor in sentencing, as it is considered to be in the public interest[41] and to indicate some measure of remorse on the offender's part.[42] According to Judge Salhany, however, this principle "is not of universal application and may be rejected by the court where the accused was inescapably caught in the commission of the crime."[43]

Consequences of Imprisonment

It is generally acknowledged that a sentence of imprisonment may have severe "collateral" consequences for a sexual offender during his or her incarceration. The extent to which this should influence a court at the sentencing stage was considered in *R. v. Campbell*.[44] A provincial magistrate had imposed a sentence of 23 months' imprisonment on the offender, pursuant to his conviction under section 146(1) of the *Criminal Code* (sexual intercourse with a female under 14 years-old). The magistrate expressed his concern about what would happen to the offender if he were sent to a federal penitentiary, and accordingly, sentenced him to a term of imprisonment short enough to allow him to serve the sentence in a provincial institution. The Nova Scotia Court of Appeal increased the offender's sentence to five years' imprisonment, and stated that the magistrate had erred in taking into account the "possibility [that] a sexual offender such as the respondent may be physically harmed in a federal penitentiary. That may well be the case, but that is not a matter for a court to take into account. The adequacy of the penal institutions and their ability to safeguard inmates is a matter for the officials of the penitentiary service and for Parliament."[45]

Recognition of the convicted sexual offender's unpleasant prospects while serving a penitentiary sentence may, however, influence the length of the sentence imposed. In *R. v. Piche, Caplette and Jones*,[46] the court stated that the sentences imposed on three accused involved in the homosexual rape of a fellow inmate:

> . . . .would have been much longer but for the fact that these accused would suffer indignities and additional punishment at the hands of other prisoners,

and would have to serve their sentences "in the hole" (segregated from the main prison population) for their protection.

Sentencing Factors Pertaining to the Circumstances of the Offence

Use of Violence

A crucial factor in the sentencing of sexual offenders is the degree of violence used in the commission of the offence. Violence, particularly when accompanied by the offender's employment of a weapon, is invariably an aggravating factor in sentences imposed on sexual offenders.[47]

Premeditation and Planning

In general, the greater the degree of premeditation and planning involved in the commission of the offence, the more serious the offence will be regarded by the court. Correspondingly, that the victim may, in the court's view, have led the offender to believe that sex would be the likely result of their social encounter may have the effect of mitigating the offender's sentence.[48]

Offences Committed by Groups

Particularly in the sentencing of sexual offenders, that an accused has acted in concert with others in committing a sexual offence is treated as an aggravating factor. In *R. v. Morrissette*,[49] the Saskatchewan Court of Appeal stated that, although rape is always a serious offence, it is even more serious where two or more men assault a female. Further, the court will usually be inclined to impose a heavier sentence on the instigator of a gang attack than on his confederates.[50]

Breach of a Position of Trust

Where an accused flagrantly breaches a position of trust in committing a sexual offence, the court will typically consider such breach of trust an aggravating factor in sentencing the accused. A common breach of trust that arises in sexual offences is that involving a parent or someone with a special ascendancy over a young person. Situations involving serious breaches of trust in this context are by no means restricted to offences involving incest[51] between a father and his daughter; comparable abuses of authority by offenders have arisen in prosecutions for gross indecency,[52] indecent assault on a male,[53] indecent assault on a female,[54] and rape[55] among others.[56] Even where no familial

ties or other special relationships exist between the offender and a young victim, the courts have acknowledged the natural ascendancy of an adult over a child and have tended to sentence such offenders more severely.[57]

Pre-sentence Reports

Pursuant to section 662 of the *Criminal Code*, the court may require the preparation and presentation of a pre-sentence report, in order to assist the court in determining an appropriate sentence for the offender and, more particularly, in determining whether the offender should receive a discharge. Whether or not a pre-sentence report will be requested with respect to a given offender is in the discretion of the court. In general, a pre-sentence report will be ordered where the court feels that it needs additional information on an offender before imposing sentence.[58] Where an offender challenges or denies a statement contained in the pre-sentence report, the onus is on the Crown to prove the accuracy of the statement. Failing such proof, the challenged information should be disregarded. Further, a statement in the pre-sentence report which alleges that the accused is suspected of other crimes for which he or she was not charged should not be considered in imposing sentence.[59]

Although the *Criminal Code* does not provide guidelines concerning the proper contents of pre-sentence reports, certain types of information are expected to be standard inclusions: the offender's level of education, criminal record, family status, employment record, and social and medical history. Recent legal judgments in Canada have formulated broad guidelines in this regard. In *R. v. Rudyk*,[60] the court stated that:

> . . . a pre-sentence report (should) be confined to its very necessary and salutary role of portraying the background, character and circumstances of the person convicted. It should not, however, contain the investigator's impressions of the facts relating to the offence charged, whether based on information received from the accused, the police or other witnesses, and whether favourable or unfavourable to the accused.

In *R. v. Bartkow*,[61] MacKeigan made the following remarks on the proper function of pre-sentence reports in sentencing an offender:[62]

> Their function is to supply a picture of the accused as a person in society — his background, family, education, employment record, physical and mental health, associates and social activities, and potentialities and motivation. Their function is not to supply evidence of criminal offences or details of a criminal record or to tell the court what sentence should be imposed.

Sentencing Alternatives to Imprisonment

The *Criminal Code* provides the sentencing court with several alternatives to the sanction of imprisonment, namely, fines, absolute or conditional discharges, and the suspension of the passing of sentence, with probationary conditions.

Fines

The imposition of a fine is one sentencing alternative to imprisonment. The general principle is that, unless the offence of which the offender was convicted specifies a minimum term of imprisonment, the court may sentence the offender to a fine. This principle is significantly modified, however, by section 646(2) of the *Criminal Code*, which provides that an accused who is convicted of an indictable offence punishable with imprisonment for more than five years may be fined in addition to, but not in lieu of, any other punishment that is authorized. Accordingly, this section precludes the court from imposing a fine as the sole punishment for most sexual offences. A fine may be imposed as the sole punishment for some sexual offences, however, most notably for the offence of "indecent act" (which is the criminal charge most often used in cases of male exposure).

Canadian courts have enunciated general principles concerning the use of fines in sentencing an offender:

> The amount of the fine should not be excessive, neither in regard to the financial means of the offender nor in regard to the gravity of the offence committed.[63]

> Any term of imprisonment imposed as an alternative to payment of a fine should not be out of proportion to the fine.[64]

> Where the court imposes a fine, it may allow the offender an appropriate length of time in which to pay the amount specified, but the court cannot order that the offender be detained in custody pending payment of the fine.[65]

Discharge Provisions

The *Canadian Committee on Corrections* advocated in 1969 that:[66]

> . . . there should be provisions that permit the court to deal with first offenders charged with a minor offence in such a way that would avoid the damaging consequences of the existence of a criminal record.
>
> A conviction against a first offender establishes a record that can carry with it life-long consequences that continue long after rehabilitation is complete and risk to the community is no greater from this individual than from the average citizen. In fact, the record may be the result of what the individual considered a prank and the individual may at no time have been a danger to society. In other cases, the exposure to public trial has a deterrent effect in itself, so that the imposition of additional punishment is superfluous, costly and damaging to both the individual and the community.
>
> An alternative should be open to the court, at this preconviction stage, so that action appropriate to the individual case may be planned, including a period of probation to test the court's assessment of the offender. This should take the form of absolute discharge, either with or without conditions.

In furtherance of these recommendations, the *Criminal Code* was amended in 1972 to provide for the absolute or conditional discharge of an offender. Section 662.1 of the *Criminal Code* authorizes the court to grant an

offender an absolute or conditional discharge, where circumstances warrant, provided the offence is one for which there is no specified minimum punishment and the offence is punishable by less than 14 years' imprisonment. Before granting an accused a discharge, the court must consider that such a disposition is both in the accused's best interests and is not contrary to the public interest.

In commenting on the requirement that a discharge be "in the best interests of the accused," the Ontario Court of Appeal has stated:[67]

> I take this to mean that deterrence of the offender himself is not a relevant consideration in the circumstances, except to the extent required by conditions in a probation order. Nor is his rehabilitation through correctional or treatment centres, except to the same extent. Normally, he will be a person of good character, or at least such character that the entry of a conviction against him may have significant repercussions.

It is apparent that discharges are sometimes used in sentencing an offender for the offence of indecent act, for example, in cases of "streaking"[68] and "mooning".[69] In *R. v. Miceli*,[70] the accused was observed masturbating himself in a department store. The court, in granting him an absolute discharge, emphasized the fact that this was a first offence and that the accused's employment prospects would be jeopardized by the existence of a criminal record.

Where the granting of a discharge is deemed to be in the accused's best interests, the court must go on to consider whether a discharge in the circumstances would not be contrary to the public interest. The need to deter others who may be disposed to commit a similar offence is a proper consideration; the more serious the offence committed by an accused, the less the likelihood that a discharge will be appropriate. Exceptions to this rule, however, do arise. In *R. v. Konzelman*,[71] the accused was found guilty of indecently assaulting a woman. Evidently, the accused had, pursuant to a bet with some friends, grabbed the complainant's breasts and shook them. The Manitoba Court of Appeal substituted a conditional discharge and one years' probation for the suspended sentence imposed at trial.

The British Columbia Court of Appeal in *R. v. Fallofield*[72] enunciated eight general principles relating to the use of the discharge provisions in section 662.1 of the *Criminal Code:*

1. The section may be used in respect of any offence other than an offence for which a minimum punishment is prescribed by law or the offence is punishable by imprisonment for 14 years or for life.

2. The section contemplates the commission of an offence. There is nothing in the language that limits it to a technical or trivial violation.

3. Of the two conditions precedent to the exercise of the jurisdiction, the first is that the Court must consider that it is in the best interests of the accused that he should be discharged either absolutely or upon condition. If it is not in the best interests of the accused, that, of course, is the end of

the matter. If it is decided that it is in the best interests of the accused, then that brings the next consideration into operation.

4. The second condition precedent is that the Court must consider that a grant of discharge is not contrary to the public interest.

5. Generally, the first condition would presuppose that the accused is a person of good character, without previous conviction, that it is not necessary to enter a conviction against him in order to deter him from future offences or to rehabilitate him, and that the entry of a conviction against him may have significant adverse repercussions.

6. In the context of the second condition the public interest in the deterrence of others, while it must be given due weight, does not preclude the judicious use of the discharge provisions.

7. The powers given by s. 662.1 should not be exercised as an alternative to probation or suspended sentence.

8. Section 662.1 should not be applied routinely to any particular offence. This may result in an apparent lack of uniformity in the application of the discharge provisions. This lack will be more apparent than real and will stem from the differences in the circumstances of cases.[73]

Suspended Sentence and Probation

Section 663 of the *Criminal Code* discloses two basic situations in which a sexual offender may be directed to comply with the terms of a probation order: where the passing of sentence is suspended, and where the sentence is either a fine or term of imprisonment not exceeding two years.

A suspended sentence implies the suspension of the passing of sentence, not the suspension of the operation of the sentence.[74] The suspended sentence is often imposed where the court considers that the accused is unlikely to commit a further, similar offence and will benefit from conditions of probation. For example, in *R. v. C*,[75] the court imposed a suspended sentence and probationary terms on a man who had pleaded guilty to incest. The court, noting that a term of imprisonment would probably cost the offender his job, considered that the evidence indicated that the accused was unlikely to commit such an offence again. In the probation order, the offender was required to undergo psychiatric evaluation, and treatment, if necessary.

Mewett, in discussing probation, has stated that:

> . . . .the object of probation is to provide for some method of dealing with those people who can be easily rehabilitated and who, with proper guidance and control, are unlikely to become criminals.[76]

A term of probation (which may not continue in force for more than three years)[77] may be imposed in addition to either a fine or imprisonment, but not in addition to both.[78] In determining whether probation is an appropriate disposition, the court will have regard to the nature of the offence, the circumstances

of its commission, the offender's age, character and antecedents.[79] A pre-sentence report may be ordered to assist the court in making this determination.

Some offences, by their very nature, are considered unsuitable for disposition of the offender by way of probation.[80] Even so, the appropriateness of probation tends to be influenced more by the circumstances of the offence than by the type of offence committed. In *R. v. St. Onge*,[81] for example, the charge against the accused was sexual intercourse with a female under 14 years of age. The 13 year-old complainant had apparently instigated the act of sexual intercourse; the court suspended the passing of the accused's sentence and put him on probation for one year.

Probation orders are commonly imposed on young, first offenders where the potential for reform is considered high.[82] A sentence incorporating probationary terms is often ordered where the court considers that the offender would benefit from some form of treatment, be it for psychiatric disorder[83] alcohol abuse[84] or drug abuse.

The frequent use of probation in the sentencing of non-violent sexual offenders[85] signifies the judicial adoption of the "treatment model" in this context.[86] For example, in *R. v. Doran*,[87] a school teacher convicted on two counts of indecently assaulting young girls was originally sentenced to a prison term of 12 months' definite and six months' indeterminate. On appeal, this sentence was varied to time served, and the offender was placed on two years' probation on the condition that he undergo psychiatric treatment on an outpatient basis. In substituting this sentence, the Court of Appeal stated:[88]

> We have before us material not presented to the trial judge which disclosed that, if the appellant were to continue his treatment with Dr. Tisdall and also take treatment at the Clarke Institute of Psychiatry, the chance of being cured is favourable. If such treatment outside the prison is likely to effect such a cure, and his imprisonment may not, we think that it is in the general interest of society to have him treated rather than imprisoned.

In reference to these judicial remarks, Schiffer has commented:[89]

> This statement represents what is perhaps the classic rationale behind the use of probationary psychiatric treatment. It articulates the widely held belief that psychotherapy, if it is to be effective at all, is most properly conducted outside the prison environment. Recognizing that the locking of an individual behind bars may not be the ideal way to effect his healthy readjustment to society, it advances an alternative method of psychic rehabilitation which, though coerced, seems rather more workable.

Imprisonment

Section 659 of the *Criminal Code* governs the institutional placement of convicted offenders who are sentenced to a term of imprisonment. In general, prison terms of less than two years are served in provincial correctional institutions and prison terms of two years or more are served in federal penitentiaries.[90] Provincial institutions vary widely in the education, release and

treatment opportunities available to inmates.[91] Moreover, in some provinces, provincial correctional institutions are used to house both convicted offenders and those awaiting trial or appeal.[92]

An offender who has been sentenced to imprisonment for a term of two years or more must, subject to federal-provincial transfer agreements, serve his or her term in a federal penitentiary. There are three categories of federal prisons: maximum security; medium security; and minimum security. Following the handing down of sentence, the offender is classified for placement purposes; the offender's length of sentence, likelihood of escape and potential danger to the community if successful in an escape attempt are considered at this stage.[93] It is in the context of these custodial arrangements that sexual offenders who are deemed to require protection from other inmates may be placed in protective custody.

Provision of Treatment

There is no authority in the *Criminal Code* which enables a sentencing court, in imposing a term of imprisonment, to direct that the accused should receive treatment while incarcerated.[94] The court may only make recommendations concerning the provision of treatment to an offender while he or she is in prison. *In R. v. Leech*,[95] for example, the court, in imposing a sentence of life imprisonment for offences of rape and buggery, considered that "whilst under sentence the accused, though not legally insane, should be considered a suitable patient for psychiatric care."[96]

The problem with such judicial recommendations is that they are not binding upon penitentiary authorities, and consequently, the sentencing court cannot be confident that treatment will be made available to the offender.[97] According to the Law Reform Commission of Canada:[98]

> Sometimes such recommendations are followed, often they are not. Although it is theoretically possible for prison authorities to transfer mentally disordered offenders to mental hospitals, in practice, such transfers are rare. Because of the sparse facilities for psychiatric treatment in prisons generally, many prisoners suffering from serious mental disorders are detained without the prospect for treatment.

Pursuant to section 19(1) of the *Penitentiary Act*,[99] the federal Solicitor General may, with the approval of the Governor in Council, enter into agreements with the government of any province to provide for the custody, in a mental hospital or other institution, of persons found to be mentally ill or mentally defective at any time during their confinement in a penitentiary. Although judges sometimes recommend, at the sentencing stage, that the offender receive treatment under the provisions of section 19, these recommendations similarly have no binding effect on penitentiary authorities.

Remission and Mandatory Supervision

Remission shortens the time that inmates spend in custody, so that even if an inmate is not granted parole, he or she may nonetheless be released before the expiration of the sentence.[100] Prior to 1977, an inmate was eligible for two different types of remission: statutory remission and earned remission. Statutory remission, which amounted to one quarter of the term to which the inmate was sentenced, was credited upon entry to an institution and could be forfeited as a result of institutional infractions. Earned remission (which operated over and above the credited statutory remission) could be achieved where an inmate was of good behaviour. It accumulated at a rate of three days per calendar month and could not be lost.

In 1977, statutory remission was abolished, and the *Penitentiary Act* was amended to provide that, prospectively, all remission must be earned. A new formula for earned remission was introduced and incorporated in section 24 of the *Penitentiary Act*:[101]

> 24(1) Subject to section 24.2, every inmate may be credited with fifteen days of remission of his sentence in respect of each month and with a number of days calculated on a pro rata basis in respect of each incomplete month during which he has applied himself industriously, as determined in accordance with any rules made by the Commissioner in that behalf, to the program of the penitentiary in which he is imprisoned.

Section 24.1 (1) of the Act provides that every inmate may forfeit earned remission where he or she is convicted of a disciplinary offence. The earned remission may be forfeited in whole or in part, but no more than 30 days may be forfeited without the concurrency of the Commissioner or an officer of the Correctional Service Canada designated by him, or more than 90 days without the concurrency of the Minister. Section 24.2 provides for the maximum remission that can be gained by inmates who had accumulated statutory remission before its abolition.[102]

Accordingly, and notwithstanding that an inmate has not been paroled, he or she may nonetheless accumulate earned remission to the extent of one third of the total sentence of imprisonment and be released on "mandatory supervision" after serving approximately two-thirds of the sentence. The inmate's entitlement to be released from custody on mandatory supervision as a result of accumulated earned remission is a matter over which the National Parole Board has been granted no legal authority.[103] Under the provisions of the *Parole Act*,[104] the National Parole Board's supervisory role and corollary legal powers concerning inmates on mandatory supervision attaches only after the inmate has been released. The Board cannot legally apprehend and recommit into custody an inmate immediately after his or her release on mandatory supervision (a practice known colloquially as "gating") on the grounds that the inmate should not be at large; section 16 of the *Parole Act* confers no such power.[105]

Legislation introduced in the Senate (Bill S-32) would confer on the National Parole Board wider powers where an inmate breaches conditions of mandatory supervision after release from prison, but does not address the more difficult and central issue: To what extent should the National Parole Board be legally authorized to prevent inmates deemed to be a considerable risk to society from being released on mandatory supervision at all?

Parole

Unlike an inmate's legal entitlement to be released on mandatory supervision where he or she has accumulated earned remission (but has not been paroled), the decision to parole an inmate is a discretionary one made by a parole board. The National Parole Board, in addition to its role concerning federal inmates, oversees applications for parole from provincial parole applicants in those provinces which do not have a parole board. Determining the parole eligibility date of an inmate is a complex process,[106] and depends primarily on the nature of the inmate's offence and the length of sentence the inmate is serving.[107] In general, inmates are eligible for parole after having served one-third of their sentence or seven years, whichever is the lesser (but at least nine months if a federal inmate). Provincial inmates serving a sentence of less than two years are eligible for parole after having served one third of their sentence.[108] Inmates under preventive detention as "dangerous offenders" are eligible for parole after three years, with a mandatory review every two years thereafter.[109] An inmate's eligibility for day parole is contingent on his or her parole eligibility date.[110]

Under the provisions of the *Parole Act*,[111] the National Parole Board is authorized, in its discretion, to grant, refuse to grant, or revoke an inmate's parole. Section 10 (1) of the Act provides that the Board may grant parole to an inmate subject to any terms or conditions desirable, if the Board considers that:

1. In the case of a grant of parole other than day parole, the inmate has derived the maximum benefit from imprisonment.
2. The reform and rehabilitation of the inmate will be aided by the grant of parole.
3. The release of the inmate on parole would not constitute an undue risk to society.

If the Board decides to grant parole, the inmate will be released under specified conditions and supervision. An inmate whose parole has been denied may appeal this decision and, even if unsuccessful, may re-apply for parole at a later date.

Community Residential Centres

Implicit in the forms of conditional release is the legislative recognition that the "controlled reintegration" of offenders into society, under conditions of parole or mandatory supervision, is the most realistic means of helping offenders make the transition from life in prison to life in the community. In recommending a form of statutory conditional release on which the current "mandatory supervision" provisions were based, the Report of the *Canadian Committee on Corrections* stated:[112]

> The aim should be to develop a system under which almost everyone would be released under some form of supervision. It is best if he is released at the point at which the chances for his successful reintroduction to community life would be highest. This means the extension of parole as we now know it to every case possible.
>
> However, there will be many who will not qualify for parole and they should also be subject to supervision. This can be accomplished by making the period of statutory remission a period of supervision in the community, subject to the same procedures that apply to parole. This means the releasee would be subject to conditions and to return to complete his sentence in the institution if he violates those provisions. He should also receive the same kind of assistance and control through supervision that applies to parolees.

Community-based residential centres (privately funded) and community corrections centres (publicly funded) are intended to assist former inmates in this difficult period of transition and serve a variety of functions.[113]

> [S]ome cater exclusively to those on day parole or a temporary absence; others assist transients, alcoholics, drug addicts and the like who may be ex-offenders; some centres are operated by governmental agencies; those in the private sector may rely solely upon charitable donations with others receiving some funding from government in the form of grants-in-aid or fees for service.

The Task Force on Community-Based Residential Centres in 1973 identified 156 such centres;[114] by 1975, there were 218 in existence.[115]

Dangerous Offenders

Legislation relating to special classes of offenders deemed to warrant preventive detention has existed in Canada since 1947[116] and substantial changes were introduced in 1961 and 1977.[117] This review considers the current "dangerous offender" provisions proclaimed in force on October 16, 1977, with particular emphasis on those relating to sexual offenders.

Part XXI of the *Criminal Code* contains the statutory provisions authorizing the preventive detention of offenders whose conduct meets the criteria specified in that part. Central to these provisions is the definition of a "serious personal injury offence"; section 687 of the *Criminal Code* defines a "serious personal injury offence as:

(a) an indictable offence (other than high treason, treason, first degree murder or second degree murder) involving

(i) the use or attempted use of violence against another person, or

(ii) conduct endangering or likely to endanger the life or safety of another person or inflicting or likely to inflict severe psychological damage upon another person,

and for which the offender may be sentenced to imprisonment for ten years or more, or

(b) an offence or attempt to commit an offence mentioned in section 246.1 (sexual assault), 246.2 (sexual assault with a weapon, threats to a third party or causing bodily harm) or 246.3 (aggravated sexual assault).

An application by the Crown to have an offender found to be a dangerous offender must be brought after his conviction for an offence, but before the offender is sentenced.[118] The Crown must prove beyond a reasonable doubt[119] that:

. . . .the offence for which the offender has been convicted is a serious personal injury offence described in paragraph (a) of the definition of that expression in section 687 and the offender constitutes a threat to the life, safety or physical or mental well-being of other persons on the basis of evidence establishing

(i) a pattern of repetitive behaviour by the offender, of which the offence for which he has been convicted forms a part, showing a failure to restrain his behaviour and a likelihood of his causing death or injury to other persons, or inflicting severe psychological damage upon other persons, through failure in the future to restrain his behaviour,

(ii) a pattern of persistent aggressive behaviour by the offender, of which the offence for which he has been convicted forms a part, showing a substantial degree of indifference on the part of the offender as to the reasonably foreseeable consequences to other persons of his behaviour, or

(iii) any behaviour by the offender, associated with the offence for which he has been convicted, that is of such a brutal nature as to compel the conclusion that his behaviour in the future is unlikely to be inhibited by normal standards of behavioural restraint, or

(b) that the offence for which the offender has been convicted is a serious personal injury offence described in paragraph (b) of the definition of that expression in section 687 and the offender, by his conduct in any sexual matter including that involved in the commission of the offence for which he has been convicted, has shown a failure to control his sexual impulses and a likelihood of his causing injury, pain or other evil to other persons through failure in the future to control his sexual impulses.[120]

Where the Crown discharges its burden of proof, section 688 provides that "the court may find the offender to be a dangerous offender and may thereupon impose a sentence of detention in a penitentiary for an indeterminate period, in lieu of any other sentence that might be imposed for the offence for which the offender has been convicted."[121] Where the court does find that the accused is a "dangerous offender" within the legal meaning of that phrase, the

court nonetheless retains a discretion whether or not to impose the sentence of indeterminate imprisonment.[122] Where a sentence of indeterminate imprisonment is imposed, a further, definite term of imprisonment may not be made consecutive to it.[123]

Section 689 provides that the Attorney General of the province in which the offence was tried must consent to the making of the application; that such application must be heard and determined by the court in the absence of a jury; and that no such application shall be heard unless at least seven days' notice has been given to the offender by the prosecutor, following the making of the application, outlining the basis on which the application is intended to be founded.

On the hearing of the application, the court is required to hear the evidence of at least two psychiatrists, one of whom is nominated by the prosecution and the other by the offender. If the offender fails or refuses to nominate a psychiatrist, the court is required to nominate one on his behalf.[124] In addition to this mandatory psychiatric testimony, the court is required to hear "all other evidence that, in its opinion, is relevant, including the evidence of any psychologist or criminologist called as a witness by the prosecution or the offender."[125] Evidence of the offender's character and reputation may also be admitted for the purpose of determining whether the offender is or is not a dangerous offender.[126] Prior to the hearing, the court has the power to direct the offender to attend for observation or, where necessary, to remand him or her in custody for this purpose.[127]

Sections 694 and 695.1 of the *Criminal Code* outline the rights of appeal of the offender and the prosecution in this context, and the offender's parole status (which varies depending on whether the sentence of indefinite detention was imposed before or after the 1977 amendments came into force). Finally, section 695 provides that, where a court finds an offender to be a dangerous offender and imposes a sentence of detention for an indeterminate period, the court must order that "a copy of all reports or testimony given by psychiatrists, psychologists or criminologists and any observations of the court with respect to the reasons for the sentence, together with a transcript of the trial of the dangerous offender be forwarded to the Solicitor General of Canada for his information."

Dangerous Sexual Offender Applications

The purpose of the *Criminal Code* provisions relating to dangerous sexual offenders has been described by the Supreme Court of Canada as follows: "to protect persons from becoming the victims of those whose failure to control their sexual impulses renders them a source of danger."[128] As section 688 makes clear, an offender convicted of a sexual offence that meets the criteria of a "serious personal injury offence" in section 687 may be deemed a dangerous offender under the provisions of either section 688 (a) or section 688 (b). Even

so, the criteria in section 688 (b) are specifically pertinent to sexual offenders; the great majority of dangerous offender applications concerning sexual offenders are brought pursuant to the provisions of section 688 (b).

The group of sexual offences considered to be "serious personal injury offences" has changed somewhat over the years. Prior to the proclamation of Part XXI of the *Criminal Code* in October, 1977, a conviction for the offences of or attempts to commit buggery and bestiality would ground dangerous sexual offender applications. These two offences, however, were not carried over into the 1977 amendments. Prior to the January 1983 amendments, an offence or attempt to commit an offence of: rape, indecent assault on a female, indecent assault on a male, sexual intercourse with a female under 14 or 14 and 15 years-old, and gross indecency, was considered to be a "serious personal injury offence" rendering an offender eligible for preventive detention.

Further changes resulted from the restructuring of assaultive sexual offences by the 1983 amendments, which define a "serious personal injury offence" to mean the three forms of sexual assault described in sections 246.1, 246.2, and 246.3 of the *Criminal Code*. It is unclear whether the omission of the offences of unlawful sexual intercourse (which can only be committed against girls either under 14, or 14 or 15) and gross indecency (which often relates to cases of homosexual or heterosexual pedophilia) resulted from a policy decision to restrict the preventive detention provisions to forms of sexual *assault* (thereby tending to exclude other forms of sexual activity involving young persons), or from an oversight in legislative drafting.

The Alberta Supreme Court in *R. v. Butler* set forth the salient issues addressed in a dangerous sexual offender application:[129]

> A dangerous sexual offender means a person who, by his conduct in any sexual matter, has shown a failure to control his sexual impulses and is likely to cause injury, pain or other evil to any person through failure in the future to control his sexual impulses. There are, therefore, three issues into which the Court must inquire, namely:
>
> 1. Has the respondent by his sexual conduct in sexual matters shown a failure to control his sexual impulses?
> 2. If so, is he likely in the future to show a similar failure?
> 3. If so, is he likely to cause injury, pain or other evil to any person?

Each of these must be proven beyond a reasonable doubt.

Failure to Control Sexual Impulses

The element of "control" in the statutory phrase, "a failure to control his sexual impulses," has been judicially construed to imply the exercise of restraint or direction upon free action, or the capacity to dominate, command, or overpower one's impulses.[130] Accordingly, a sexual impulse is not controlled when it is gratified.[131] In *R. v. McAmmond*,[132] it was submitted on behalf of the offender that he possessed the requisite control. The submission was founded

on the basis that, when the seven year-old complainant requested that he stop indecently assaulting her, he belatedly did so. The Manitoba Court of Appeal considered that the offender's putative "control" evidenced itself only after he had molested the child and satisfied whatever sexual impulses motivated him. In reference to the offender's further submission that, for a three or four year prior period, he had not committed any act of sexual deviation and thereby had manifested sexual control, the Court relied on a psychiatrist's assessment that this period was less evidence of control than of the unavailability of an individual to be accosted.

Likelihood of Causing Injury, Pain or Other Evil

A sexual offender convicted of a "serious personal injury offence" (section 687) may be sentenced to preventive detention on a dangerous offences' application if, "by his conduct in any sexual matter including that involved in the commission of the offence for which he has been convicted, has shown a failure to control his sexual impulses and a likelihood of his causing injury, pain or other evil to other persons through failure in the future to control his sexual impulses" (section 688(b)). While the test of "future likelihood" has proven intractable both medically and legally,[133] the sorts of harms whose reoccurrence is sought to be prevented have been broadly construed by Canadian courts, particularly where young victims are concerned. The case of *R. v. Dwyer*[134] is illustrative. The offender had a lengthy record of offences of gross indecency and indecent assault on a male. In commenting on the meaning of "evil" in this context, the Alberta Court of Appeal stated:[135]

> Parliament has not seen fit to define "evil" and in construing the word for the purposes of [s. 688] a Court ought not by judicial pronouncements to narrow its scope and meaning beyond the necessities of the context in which it is used. The public interest looms large here. The sections have to do with sentencing, and by the very use of the words "preventive detention" in Part XXI of the *Criminal Code* in which the sections appear, the public interest primarily to be served is that aspect which gives weight to the protection of the public . . . .In general understanding, when "evil" is used as a noun it usually connotes moral badness or depravity. In the context of the sections and the circumstances of the present case, I think it must be taken to mean evil consequent on the commission of any offence within the second category of the grouping in *Klippert v. The Queen*, particularly in so far as it involves young boys. It is not disputed that the offences on which Dwyer was convicted are evil in the general understanding.

The words "other evil" are not necessarily related to injury and pain and, accordingly, damage caused to young persons' morals, especially where it is such as could lead them into male prostitution or other behaviours that exploit them, is a form of that evil.[136] It is not necessary that young persons be physically harmed by the offender, if they were patently exploited sexually by him.[137]

The most crucial aspect of dangerous offender proceedings, and undoubtedly the most problematic, is the question of the offender's "likelihood of . . .

causing injury, pain or other evil to other persons through failure in the future to control his sexual impulses".[138] It is the present likelihood of the sexual offender's future conduct of which the court must be satisfied beyond a reasonable doubt;[139] it is not necessary that the court be satisfied that the offender will in fact re-offend in the manner provided.[140]

The mandatory psychiatric testimony in dangerous offender proceedings is intended to provide the court with guidance on this issue. Even so, some Canadian courts have vigorously challenged the reliability and validity of psychiatric prediction techniques. In *R. v. Butler*,[141] a case in which the Crown's dangerous offender application was unsuccessful, the Supreme Court of Alberta remarked:[142]

> It is clear that the state of the art of predicting dangerousness in this area of the discipline of psychiatric medicine leaves much to be desired. It is one of the least developed areas. To predict dangerousness is, in itself, dangerous. The profession over-predicts.

A member of that province's Court of Appeal has expressed comparable scepticism:[143]

> Psychiatry in its present stage is far from an exact science in predicting human behaviour, whether the behaviour is to be given such treatment in the future as may be thought to help aberrations, or is to be allowed to go unchecked. The Court draws such help as it can from the testimony of the psychiatrists in the light of the whole case . . . .In weighing the evidence of psychiatrists it must be kept in mind that behavioural psychiatry is still an uncertain field influenced at times by theories which are not necessarily demonstrated when put into practice in the realities of life. We are dealing with the likelihood of evil, as perceived by the community, being caused to any person.

The purpose of the psychiatric examinations of the offender contemplated by Part XXI is to assist the psychiatrists in forming an opinion as to the likely future conduct of the offender in sexual matters.[144] At the hearing, the psychiatrists proffer their opinions in this regard as expert witnesses.[145] It is not proper to ask a psychiatrist whether the offender is a dangerous sexual offender, nor is it proper, where the facts are in dispute, to ask the psychiatrist to express an opinion on disputed facts.[146] Where the facts are not in dispute, however, different considerations apply. The Manitoba Court of Appeal has held:[147]

> [O]n the basis of undisputed facts or on an *ex hypothesi* basis, the psychiatrist may properly be asked his opinion on the likelihood of the accused causing injury, pain or other evil through failure in the future to control his sexual impulses, and upon the likelihood of his committing a further sexual offence. These are the areas in which a psychiatrist's expert opinion is most valuable . . . The final decision in all matters must rest with the Judge but he is entitled to the opinions of the psychiatrists, which he may accept or reject in whole or in part.[148]

In addition to psychiatric testimony, the court conducting a dangerous offender hearing is required to hear all other relevant evidence. Although the results of "phallometric tests" (which measure male sexual arousal by gauging

changes in the subject's penile circumference in response to different auditory and visual stimuli) have been adduced at dangerous sexual offender hearings, no Canadian court has yet accorded them evidentiary weight.[149] The Supreme Court of Ontario has held, on the basis of expert testimony, that the phallometric test is neither scientifically reliable nor scientifically acceptable as yet, and therefore, does not meet the standards of judicial use.[150]

In a dangerous sexual offender proceeding, the offender's prospects of treatment or cure are not relevant to the determination whether he or she is a "dangerous offender" within the legal meaning of that term.[151] These considerations are, however, relevant to the exercise of the judge's discretion whether or not to impose a sentence of indefinite detention. The court is entitled to take into account any psychiatric or other evidence which indicates that the offender's cure is probable with a determinate period, in assessing the appropriateness of a sentence of indeterminate imprisonment.[152]

References

Chapter 37: Sentencing

[1] See Culliton, "Sentencing Guidelines: A Judicial Viewpoint" in Grosman (ed.), *New Directions in Sentencing* (Toronto: Butterworths, 1980) at 295; and Hall, "Sentencing the Individual", *ibid.*, at 302.

[2] See, e.g., *R. v. Morrissette* (1970), 1 C.C.C. (2d) 307 (Sask. C.A.).

[3] *R. v. Willaert* (1953), 105 C.C.C. 172 at 176 (Ont. C.A.).

[4] *R. v. Jackson* (1977), 21 N.S.R. (2d) 17 at 20 (C.A.).

[5] Ruby, *Sentencing* (2d ed. Toronto: Butterworths, 1980) at 1.

[6] Decore, *Criminal Sentencing: The Role of the Canadian Courts of Appeal and the Concept of Uniformity* (1963-64), 6 Cr. L.Q. 324 at 325.

[7] See "Case Studies on the Sentencing of Sexual Offenders," *infra*.

[8] Griffiths, Klein, and Verdun-Jones, *Criminal Justice in Canada* (Vancouver: Butterworths, 1980) at 184.

[9] Nadin-Davis, *Canadian Sentencing Digest* (1981) at 25-26.

[10] See Waller, "The Reform of Punishment" in Law Reform Commission of Canada, *Studies on Sentencing* (Ottawa: Information Canada, 1974) at 93-205.

[11] [1946] O.R. 808 at 815 (C.A.).

[12] (1976), 19 Cr. L.Q. 276 (Ont. C.A.).

[13] *Ibid.*

[14] *R. v. Morrissette* (1970), 1 C.C.C. (2d) 207 (Sask. C.A.).

[15] Law Reform Commission of Canada, *Fear of Punishment* (Ottawa: Supply and Services Canada, 1976) at 13.

[16] *Ibid.*

[17] Ruby, *supra*, note 5 at 9.

[18] (1975), 26 C.C.C. (2d) 317 (Ont. C.A.).

[19] *R. v. Walsh* (1979), 10 C.R. (3d) S-30 (Que. S.C.) and *cf. Amero v. The Queen* (1978), 3 C.R. (3d) S-45 (N.S.C.A.).

[20] *R. v. G.B.* (1981), 47 N.S.R. (2d) 541 (Fam. Ct.).

[21] *R. v. Trask* (1974), 28 C.R.N.S. 321 (Ont. C.A.).

[22] *Strickland v. The Queen* (1981), 22 C.R. (3d) 287 (Alta. C.A.).

[23] *R. v. M* (1979), 30 N.S.R. (2d) 638 (C.A.).

[24] (1979), 46 C.C.C. (2d) 573 (Ont. C.A.).

[25] *Ibid.*, at 576 *per* Brooke J.A. For a similar sentencing approach to pedophilic offenders, see *R. v. Doran* (1971), 16 C.R.N.S. 9 (Ont. C.A.).

[26] *R. v. Iwaniw* (1959), 127 C.C.C. 40 at 50-51 (Man. C.A.).

[27] Nadin-Davis, *supra*, note 9 at 54.

[28] *Lees v. The Queen* (1979), 46 C.C.C. (2d) 385 (S.C.C.).

[29] Nadin-Davis, *supra*, note 9 at 57.

[30] (1974), 15 C.C.C. (2d) 376 at 377 (Ont. C.A.).

[31] See, *e.g.*, *R. v. Niman* (1974), 31 C.R.N.S. 51 (Ont. Prov. Ct.).

[32] See, *e.g.*, *R. v. Pilgrim* (1981), 64 C.C.C. (2d) 523 (Nfld. C.A.) (indecent assault on a male); *R. v. D* (1981), 63 C.C.C. (2d) 351 (Que. C.A.) (incest); *R. v. McBride*, unreported, Oct. 14, 1981 (Ont. C.A.) (indecent assault on a female); and *R. v. Descalchuk* (1980), 22 C.R. (3d) 89 (B.C.C.A.) (rape).

[33] Ruby, *supra*, note 5 at 88.

[34] See generally Salhany, *Canadian Criminal Procedure* (2d ed. Toronto: Canada Law Book, 1978) at 228; Martin, "Mental Disorder and Criminal Responsibility in Canadian Law," in Hucker, Webster, and Ben-Aron, eds., *Mental Disorder and Criminal Responsibility* (Toronto: Butterworths, 1981) at 15; Tanay, "In Defence of the Insanity Defence," *ibid.*, at 121.

[35] (1981), 23 C.R. (3d) 56 (Ont. C.A.).

[36] Ruby, *supra*, note 5 at 111.

[37] (1974), 10 N.S.R. (2d) 94 (C.A.).

[38] (1971), 5 C.C.C. (2d) 366 (Ont. C.A.).

[39] *R. v. Hall* (1981), 63 C.C.C. (2d) 535 (Alta. C.A.).

[40] (1979), 35 N.S.R. (2d) 35 (C.A.).

[41] *R. v. De Haan* (1967), 52 Cr. App. R. 25 (C.C.A.); *R. v. Johnston and Tremayne*, [1970] 4 C.C.C. 64 (Ont. C.A.).

[42] Salhany, *supra*, note 34 at 268.

[43] *Ibid.* See *R. v. Spiller*, [1969] 4 C.C.C. 211 (B.C.C.A.).

[44] (1978), 26 N.S.R. (2d) 460 (C.A.).

[45] *Ibid.*, at 461.

[46] (1978), 21 Cr. L.Q. 25 (Alta. T.D.).

[47] *R. v. D* (1981), 23 C.R. (3d) 56 (Ont. C.A.).

[48] See *R. v. Simmons* (1973), 13 C.C.C. (2d) 65 (Ont. C.A.); *R. v. St. Onge* (1977), 17 N.B.R. (2d) 99 (C.A.); and *Strickland v. The Queen* (1981), 22 C.R. (3d) 287 (Alta. C.A.).

[49] (1970), 1 C.C.C (2d) 307 (Sask. C.A.).

[50] *R. v. Lévesque* (1980), 19 C.R. (3d) 43 (Que. S.C.).

[51] *R. v. I* (1976), 1 A.R. 27 (C.A.).

[52] *R. v. Wood* (1975), 26 C.C.C. (2d) 100 (Alta. C.A.).

[53] *R. v. Tomkulak* (B.C.C.A., Vancouver, N. 800960, June 16, 1981).

[54] *X. v. The Queen*, [1970] C.A. 1093.

[55] *R. v. D* (1981), 23 C.R. (3d) 56 (Ont. C.A.).

[56] Nadin-Davis, *supra*, note 9 at 105.

[57] *Ibid.*

[58] Parker, *The Law of Probation*, 19 Can. J. Crim. Corr. 51 at 115

[59] *R. v. Morelli* (1977), 37 C.C.C. (2d) 392 (Ont. Prov. Ct.).

[60] (1975), 1 C.R. (3d) S-26 at S-31 (N.S.C.A.).

[61] (1978), 1 C.R. (3d) S-36 (N.S.C.A.).

[62] *Ibid.*, at 40.

[63] Ruby, *supra*, note 5 at 231-242.

[64] *Ibid.*, at 237.

[65] *R. v. Berger*, [1971] 1 O.R. 765 (C.A.).

[66] *Report of the Canadian Committee on Corrections* (Ottawa: Queen's Printer, Canada, 1969) at 194.

[67] *R. v. Sanchez-Pino* (1973), 11 C.C.C. (2d) 53 (Ont. C.A.).

[68] *R. v. Niman* (1974), 31 C.R.N.S. 51 (Ont. Prov. Ct.).

[69] *R. v. Balazsy* (1980), 54 C.C.C. (2d) 346 (Ont. Prov. Ct.).

[70] (1977), 36 C.C.C. (2d) 321 (Ont. Prov. Ct.).

[71] (1980), 5 Man. R. (2d) 165 (C.A.).

[72] (1973), 13 C.C.C. (2d) 450 (B.C.C.A.).

[73] A record of the discharge is maintained pursuant to the provisions of the *Criminal Records Act*. An offender may remove such record by applying in accordance with the terms of the Act.

[74] Salhany, *supra*, note 34 at 283.

[75] (1981), 23 C.R. (3d) 71 (Que. C.A.).

[76] Mewett, *The Suspended Sentence and Preventive Detention* (1958-59), 1 Cr. L.Q. 268 at 271.

[77] *Cr. Code*, ss. 663(3) and 664(2)(b).

[78] *R. v. Smith* (1972), 7 C.C.C. (2d) 468 (N.W.T.T.C.); *R. v. Blacquiere* (1975), 24 C.C.C. (2d) 168 (Ont. C.A.); *R. v. St. James* (1981), 20 C.R. (3d) 389 (Que. C.A.).

[79] Mewett, *supra*, note 76 at 272.

[80] See, *e.g.*, *R. v. Shanower* (1972), 8 C.C.C. (2d) 527 (Ont. C.A.) (rape).

[81] (1977), 17 N.B.R. (2d) 99 (C.A.).

[82] See *R. v. Bélanger* (1979), 46 C.C.C. (2d) 266 at 268.

[83] *R. v. DeCoste* (1974), 10 N.S.R. (2d) 94 (C.A.).

[84] *R. v. Pharo* (1970), 12 C.R.N.S. 151 (Ont. Co. Ct.).

[85] See Schiffer, *The Sentencing of Mentally Disordered Offenders* (1976), 14 Osgoode Hall L.J. 307.

[86] *Ibid.*, at 321-22.

[87] *Supra*, note 25.

[88] *Ibid.*

[89] Schiffer, *supra*, note 85 at 322.

[90] *Cr. Code*, s. 659(1).

[91] Griffiths, Klein, and Verdun-Jones, *supra*, note 8 at 208.

[92] See *Report of the Canadian Committee on Corrections*, *supra*, note 66 at 289-92.

[93] Griffiths, Klein, and Verdun-Jones, *supra*, note 8 at 210-11.

[94] Ruby, *supra*, note 5 at 116.

[95] [1973] 1 W.W.R. 744 (Alta. S.C.).

[96] *Ibid.*, at 756.

[97] Schiffer, *supra*, note 85 at 331.

[98] Canada. Law Reform Commission of Canada, *The Criminal Process and Mental Disorder* (Ottawa: Information Canada, 1975, p. 46).

[99] *Penitentiary Act*, R.S.C. 1970, c. P-6, *as am.*

[100] See generally Griffiths, Klein, and Jones, *supra*, note 8 at 261 *et. seq.*

[101] *Penitentiary Act*, R.S.C. 1970, c. P-6, *as am.*

[102] *Penitentiary Act*; R.S.C. 1970, c. P-6, *as am.*, s. 24.1(1).

[103] *R. v. Moore* (1983), 33 C.R. (3d) 99 (Ont. C.A.), *aff'd* (1983), 33 C.R. (3d) 97 (S.C.C.). See also *Truscott v. Director of Mountain Institution and National Parole Board* (1983), 33 C.R. (3d) 121 (B.C.C.A.).

[104] *Parole Act*, R.S.C. 1970, c. P-2, ss. 10, 12, 15, and 16.

[105] *R. v. Moore*, *supra*, note 103; *Truscott v. Director of Mountain Institution and National Parole Board*, *supra*, note 103.

[106] See generally *Parole Regulations*, S.O.R. 178-428, 78-524, 78-628, 79-88, 81-318, and 81-487.

[107] Law Reform Commission of Canada, *The Parole Process* (Ottawa: Supply and Services Canada, 1976) at 4.

[108] Griffiths, Klein, and Verdun-Jones, *supra*, note 8 at 262.

[109] *Cr. Code*, s. 695.1(1). Section 695.1(2) governs the parole status of offenders in custody under a sentence of preventive detention imposed before the pertinent 1977 amendments came into force.

[110] Griffiths, Klein, and Verdun-Jones, *supra*, note 8 at 262-63.

[111] *Parole Act*, R.S.C. 1970, c. P-2, s. 6.

[112] *Report of the Canadian Committee on Corrections*, *supra*, note 66 at 350.

[113] Griffiths, Klein, and Verdun-Jones, *supra*, note 8 at 278, and see generally *Report of the Task Force on Community-Based Residential Centres* (Ottawa: Information Canada, 1973).

[114] *Ibid.*, at 10.

[115] Ministry of the Solicitor General of Canada, *Directory of Community Based Residential Centres in Canada* (Ottawa: Ministry Secretariat, 1975).

[116] See *Report of the Canadian Committee on Corrections*, *supra*, note 66 at 243 *ff.*

[117] For the history of the various "habitual offender" and "dangerous offender" legislation in Canada, see *Report of the Canadian Committee on Corrections*, *ibid.*, at 241 *ff.*; *Salhany*, *supra*, note 42 at 292-300; Griffiths, Klein, and Verdun-Jones, *supra*, note 8 at 317-25; and Mewett, *Habitual Criminal Legislation Under the Criminal Code* (1961), 39 Can. Bar Rev. 42.

[118] *Cr. Code*, s. 688.

[119] *R. v. Butler* (1978), 41 C.C.C. (2d) 410 (Alta. S.C.); *R. v. Jackson* (1981), 61 C.C.C. (2d) 540 (N.S.C.A.).

[120] *Cr. Code*, s. 688.

[121] But see text accompanying notes 136 and 137, *infra*.

[122] *R. v. Hall* (1981), 63 C.C.C. (2d) 535 (Alta. C.A.), leave to appeal to S.C.C. refused March 5, 1982; *R. v. Milne* (1982), 7 W.C.B. 443 (B.C.C.A.); *R. v. Crosby* (1982), 1 C.C.C. (3d) 233 (Ont. C.A.).

[123] *R. v. Martin* (1982), 65 C.C.C. (2d) 376 (Que. C.A.).

[124] *Cr. Code*, s. 690(3).

[125] *Cr. Code*, s. 690(1).

[126] *Cr. Code*, s. 692.

[127] *Cr. Code*, s. 691.

[128] *Klippert v. The Queen*, [1968] 2 C.C.C. 129 (S.C.C.). For other judicial statements concerning the purposes of preventive detention provisions, see *Hatchwell v. The Queen* (1975), 21 C.C.C. (2d) 301 (S.C.C.) and *R. v. MacInnis* (1981), 64 C.C.C. (2d) 553 (N.S.C.A.).

[129] (1978), 41 C.C.C. (2d) 410 (Alta. S.C.).

[130] See *R. v. Kelman* (1971), 4 C.C.C. (2d) 8 at 10 (B.C.S.C.).

[131] *Ibid.*

[132] [1970] 1 C.C.C. 175 (Man. C.A.).

[133] See generally Ericson, *Penal Psychiatry in Canada: The Method of our Madness* (1976), 26 U.T.L.J. 17; Greenland, *Dangerous Sex Offenders in Canada* (1972), 14 Can. J. Crim. Corr. 44; Klein, *The Dangerousness of Dangerous Offender Legislation: Forensic Folklore Revisited* (1976), 18 Can. J. Crim. Corr. 109; Klein, *Habitual Offender Legislation and the Bargaining Process* (1973), 15 Cr. L. Q. 417; and Law Reform Commission of Canada, *Imprisonment and Release* (Working Paper 11) (Ottawa: Information Canada, 1975) at 27-31.

[134] (1977), 34 C.C.C. (2d) 293 (Alta. C.A.).

[135] *Ibid.*, at 300.

[136] *R. v. Roestad* (1971), 5 C.C.C. (2d) 564 (Ont. Co. Ct.).

[137] *R. v. Milne* (1982), 7 W.C.B. 443 (B.C.C.A.).

[138] *Cr. Code*, s. 688(b).

[139] *R. v. Knight* (1975), 27 C.C.C. (2d) 343 (Ont. H.C.).

[140] *Carleton v. The Queen* (1981), 23 C.R. (3d) 129 (Alta. C.A.), leave to appeal to S.C.C. granted April 6, 1982.

[141] *Supra*, note 129.

[142] *Ibid.*, at 411.

[143] *R. v. Dwyer*, *supra*, note 134 at 303 *per* Clement J.A.

[144] *R. v. Loysen* (1973), 13 C.C.C. (2d) 202 (B.C.S.C.).

[145] *R. v. McAmmond*, *supra*, note 132.

[146] *Ibid.*

[147] *Ibid.*, at 182.

[148] See also *R. v. Kelman*, *supra*, note 130.

[149] Kastner, "Dangerous Offenders", an unpublished paper prepared in 1982 for Ontario Crown Attorneys, at 49.

[150] *R. v. Carbone*, unreported, April 19, 1982 (Ont. S.C.).

[151] *Carleton v. The Queen*, *supra*, note 140.

[152] *Ibid.* See also *R. v. Hall*, *supra*, note 122.

Chapter 38

Convicted Offenders

The denominator used in the presentation of findings from the National Corrections Survey is 695 convicted male child sexual offenders. In addition to this group, eight convicted offenders were women; the circumstances of the offences committed by females are given separately as case studies. The 695 convicted male offenders are considered in relation to their victims, respectively: offenders having male victims (129), female victims (545) and two or more victims (21).

The review of the previous and current convictions of offenders in relation to the number and types of offences committed is given in Chapter 40, *Recidivism*. To consolidate the presentation of information given in relation to providing a description of the offenders and the review of recidivism (e.g., ages of victims and offenders), selected findings concerning the prior criminal record of offenders are given in this chapter.

Sex of Victims

Of male offenders having a single victim, 545 of the victims were females and 129 were males. For the small group of 21 male offenders having two or more victims, children of both sexes had been involved and, in some instances, the sex of the second child or additional victim was not specified.

In comparison with the findings of the National Population Survey, proportionately more victims of convicted offenders were females and fewer were males. In relation to the gender ratios of victims known to the public services documented in the other national surveys, the proportion of female victims of convicted offenders (78.4 per cent) was closer to that of the National Police Force Survey (77.7 per cent) than to those of the surveys of hospitals (86.3 per cent) and child protection services (85.6 per cent). In each of the four national surveys, proportionately fewer male victims were known to public services than the proportion documented in the National Population Survey.

The findings concerning the gender ratio of victims of convicted offenders suggest that once sexual offences come to the attention of the police, the sex of the victim appears to have little bearing in relation to whether offenders were subsequently convicted.

Table 38.1

Prior Criminal Records of Convicted Male Child Sexual Offenders: by Types of Victims of Offences Involving Current Convictions

Victims of Current Convictions	Prior Criminal Records of Offenders							
	None		Sexual Offences		Other Offences		Total	
	No.	%	No.	%	No.	%	No.	%
Male	49	38.0	51	39.5	29	22.5	129	100.0
Female	206	37.8	117	21.5	222	40.7	545	100.0
Multiple	7	33.3	11	52.4	3	14.3	21	100.0
TOTAL	262	37.7	179	25.8	254	36.5	695	100.0

National Corrections Survey. The information in this table provides the denominators for the presentation of findings concerning recidivism.

Sexual recidivism is assessed here in relation to the proportion of convicted male child sexual offenders having one or more previous convictions for sexual offences when they were adults. Excluded from this definition are: sexual offences which were committed, but never reported; offences committed when offenders were juveniles; and sexually motivated crimes resulting in charges or convictions which were otherwise classified. The classification used separates the convicted male child sexual offenders into: those having no prior convictions as adults; those previously convicted only for non-sexual offences; and those having previous convictions for sexual offences, some of whom had also been convicted earlier of non-sexual offences.

Despite the absence of national information on the level of recidivism of all types of convicted offenders in custody or under supervision of federal, provincial and territorial correctional services, the findings of the National Corrections Survey indicate that sexual recidivism involving one in four convicted child sexual offenders (25.8 per cent) is neither a rare nor isolated phenomenon.

While the *general* level of recidivism (all types of previous convictions as an adult) varied little in relation offences having different types of victims for which offenders were currently sentenced, sharp differences occur when *sexual* recidivism is considered separately from previous convictions for non-sexual offences. The levels of sexual recidivism for the three categories of convicted male child sexual offenders were: 21.5 per cent, heterosexual offenders; 39.5

per cent, homosexual offenders; and 52.4 per cent, offenders having multiple victims. While overall, two in three offenders (62.3 per cent) had a prior criminal record as an adult, only one in seven offenders subsequently having multiple victims (14.3 per cent) and about one in five (22.5 per cent) later convicted of a homosexual offence had previously been sentenced for a non-sexual offence. In contrast, two in five offenders (40.7 per cent) later convicted of a heterosexual offence had previously been sentenced for a non-sexual offence.

Age Distribution

Paralleling the findings of the other national surveys, proportionately more victims of convicted male offenders were young males and fewer were young females. Less than a half of the male victims (45.0 per cent) were age 11 or younger while only about a third (35.9 per cent) of female victims were in this age category. About one in six victims (16.4 per cent) was 16 years-old or older; proportionately, twice as many females as males were older adolescents. Of the 21 convicted offenders having two or more victims, when the age of the youngest victim is considered, six in seven (85.7 per cent) were young children age 11 or younger.

Ages of Victims	Male Victims		Female Victims		Multiple Victims	
	No.	%	No.	%	No.	%
Under age 7	14	10.9	71	13.0	6	28.6
7–11 years	44	34.1	125	22.9	12	57.1
12–13 years	25	19.4	91	16.7	—	—
14–15 years	21	16.3	66	12.1	1	4.8
16 years and older	12	9.3	102	18.7	—	—
Not reported	13	10.0	90	16.5	2	9.5
TOTAL	129	100.0	545	99.9*	21	100.0

* rounding error

In contrast to the findings on the age distribution of victims documented in the other national surveys, the victims of convicted offenders were proportionately older with fewer being young children age 11 or younger. This finding indicates that in a proportion of cases known to the authorities, the young age of the child appears to be an appreciable factor in determining the outcome of charges laid against child sexual offenders.

In relation to the prior criminal record of convicted offenders, the findings indicate that with the exception of the female victims of sexual recidivists, the male victims of homosexual offenders were typically younger than the female victims of first-time offenders and non-sexual recidivists. Regardless of the nature of the offender's previous criminal record, the victims of offenders committing sexual offences against two or more children consistently constituted the youngest group which was sexually assaulted.

Criminal Record of Offenders	Average Age of Victims of Current Convictions of Offenders			
	Male Victims	Female Victims	Multiple Victims	Total
None	10.7	10.9	8.1	10.8
Sexual offences	11.6	11.4	6.8	11.2
Other offences	11.6	12.1	8.0	12.1
TOTAL	11.2	11.5	7.5	11.3

The victims of offenders convicted for the first time were the youngest (10.8 years); they were followed by the victims of sexual recidivists (11.2 years) and the victims of non-sexual recidivists (12.1 years). In relation to the risk of the very young child being a victim of a sexual offence, sexual recidivists were no more dangerous than the other two categories of convicted male child sexual offenders. The most dangerous offender in this regard was typically the male who had been convicted for the first time.

Time of Occurrence

The reported seasonal distribution concerning when the offences committed by convicted offenders occurred parallels the findings in this regard of the National Police Force Survey. While overall there was a relatively uniform seasonal distribution, proportionately more offences had been committed during the summer and somewhat fewer during the winter. The seasonal distribution was: winter (21.4 per cent); spring (25.4 per cent); summer (30.2 per cent); and autumn (23.0 per cent).

Where the Offences Occurred

Using the same classification of private and public places as that adopted in the other national surveys, it was found that slightly less than half of the offences (46.8 per cent) committed by convicted male offenders had been committed in private places, about a third had occurred in public places (33.4 per cent), and the location of the remainder was not ascertained from the available records (19.8 per cent).

Location Of Offences	Male Victims (n=129)	Female Victims (n=545)	Multiple Victims (n=21)
	Per Cent	Per Cent	Per Cent
Private places	43.0	47.8	57.1
Public places	30.2	34.3	28.6
Not reported	26.8	17.9	14.3

For cases for which this information was available, the ratios of offences committed in private and public places were generally comparable for male and female victims. However, of offences committed in private places, females were twice (30.0 per cent) as likely as males (14.1 per cent) to have had offences committed against them in their own homes, while the reverse was true of offences occurring in the offender's home. In the latter instance, male victims were twice (26.8 per cent) as likely to have been victimized in an offender's home as females (13.7 per cent). Of convicted offenders having two or more victims, proportionately more of these offences were committed in private places than offenders having a single victim.

The proportional distribution of private to public locations where the offences committed by convicted male offenders occurred is somewhat lower than that documented in the National Police Force Survey. However, this difference may be accounted for by the substantially higher proportion of cases for which the location of the offence was not identified in correctional records. The findings for the two surveys (police and corrections) were comparable in relation to the proportion of victims and offenders living in the same households and the proportion of offenders who were family members or relatives.

In about one in five offences (22.0 per cent), the victim and the convicted offender had been living in the same household when the offence was committed, with this situation having involved twice (24.6 per cent) as many female victims as male victims (12.1 per cent). These results parallel those of the National Police Force Survey in which slightly less than a fifth of the children and suspects were living in the same household or residence. When the experience of victims in all age groups is considered, there was an inverse relationship between their ages and the locations where the offences occurred. The likelihood of the youngest group of victims having been assaulted in their own homes was 33.0 per cent, while for the oldest group, this had happened to only about one in six (16.0 per cent).

In comparison with the findings of other surveys of convicted sexual offenders having both children and adults as victims, it appears, although exactly similar information is not available, that a higher proportion of convicted child sexual offenders commit their crimes in private locations. In 1974, a census was taken of 495 sexual offenders in custody in federal penitentiaries across Canada.[1] This group included offenders having both children and adults as victims; the study included only prisoners incarcerated or under supervision of the federal correctional service. Allowing for these differences between the 1974 Survey of the Canadian Penitentiary Service and the 1982 National Corrections Survey, it was found in the earlier review that about a third (34.9 per cent) of the sexual offences had been committed in private locations in contrast with under half (46.8 per cent) of the offences documented in the present survey.

Types of Sexual Acts

In contrast to the types of sexual acts committed against victims whose experience was documented in other national surveys conducted by the Committee, proportionately more of the sexual acts committed by convicted offenders were of a more serious nature having involved completed or attempted vaginal and anal penetration. Proportionately twice as many sexual acts committed by convicted male child sexual offenders as those documented in the National Police Force Survey had involved vaginal penetration with a penis and anal penetration with a penis against male victims.

Table 38.2

Types of Sexual Acts Committed Against Children by Convicted Male Child Sexual Offenders

Type of Sexual Act Committed Against The Child	Male Victims (n=129)		Female Victims (n=545)	
	No.	Non-Accum. %	No.	Non-Accum. %
Fondling/touching breasts, buttocks	8	6.2	100	18.3
Fondling/touching genital area	46	35.7	120	22.0
Kissing mouth, other parts	7	5.4	42	7.7
Oral-genital	28	21.7	51	9.4
Oral-anal	1	0.8	1	0.2
Attempted vaginal penetration with penis	—	—	54	9.9
Vaginal penetration with penis	—	—	192	35.2
Vaginal penetration with finger	—	—	32	5.9
Vaginal penetration with object	—	—	4	0.7
Attempted anal penetration with penis	6	4.7	7	1.3
Anal penetration with penis	21	16.3	9	1.7
Anal penetration with finger	3	2.3	1	0.2
Anal penetration with object	4	3.1	2	0.4
Bestiality	1	0.8	4	0.7
Exposed genitalia	13	10.0	51	9.4
Exposed nude body	6	4.7	19	3.5

National Corrections Survey. The sexual acts committed by convicted male child sexual offenders having more than one victim are given in the text.

Some form of vaginal penetration had been attempted or completed against half of the female victims (51.7 per cent). Offenders had had sexual intercourse with about one third of the girls (35.2 per cent) and about one in 28

females (3.6 per cent) had been a victim of completed or attempted anal penetration. In contrast, acts of completed or attempted anal penetration had been committed against one in four male victims (26.4 per cent). Male victims were also twice (21.7 per cent) as likely as girls (9.4 per cent) to have been involved in oral-genital contacts and they were more than half again as likely to have had their genitals sexually touched. On the other hand, one in five girls (18.3 per cent) had had her breasts or buttocks sexually fondled with acts of this kind having happened to only one in 16 male victims (6.2 per cent).

In five cases, one involving a boy and four involving girls, the victims had been forced by convicted male sexual offenders to commit acts of bestiality. One of the 21 convicted offenders having two or more victims had also forced children to engage in the act of bestiality. As well, in one of the eight cases involving a convicted female offender, an act of this kind had been committed. Despite the suggestion that "it is difficult to provide a rationale for maintaining the bestiality provision",[2] the findings indicate that in the instance of this survey, acts of this kind had involved about one in a hundred children of convicted sexual offenders.

Only one sexual act had been committed against three in four victims (73.9 per cent). In incidents involving more than one sexual act, proportionately, twice as many girls (26.4 per cent) as boys (14.7 per cent) had been victims.

The findings in Table 38.2 list the sexual acts committed in incidents in which only a single victim had been involved. In addition to this group, the sexual acts committed by the 21 convicted male offenders having two or more victims had involved: vaginal penetration with a penis (3); attempted vaginal penetration (2); anal penetration [penis (1), finger (1)]; oral-genital contact (5); acts of exposure (5); thigh intercourse (3); kissing mouth, other parts of the body (1); and bestiality (1). Proportionately, the convicted offenders having multiple victims in comparison to those having single victims appear to have committed fewer serious sexual acts, but as the findings concerning physical injuries to victims indicate, they were more likely to have hurt children.

The sexual acts of completed and attempted vaginal and anal penetration with a penis were considered in relation to whether convicted offenders had a prior criminal record. Of acts of this kind, those involving completed and attempted sexual intercourse with young female victims accounted for 85.1 per cent of the total; of the remainder involving completed or attempted acts of buggery, three in five (61.4 per cent) were against males, one in three (36.4 per cent) was against a female and one in 50 (2.2 per cent) was committed by offenders having multiple victims.

In the National Corrections Survey, about a third of the offenders (35.2 per cent) were sentenced for having had sexual intercourse with female victims and one in 10 (9.9 per cent) had attempted these acts. The findings indicate that there is a close association between whether offenders were recidivists and whether these types of acts had been committed against victims.

Sexual Acts Committed Against Female Victims	Previous Criminal Record		
	None	Sexual Offences	Other Offences
	Non-Accumulative Percentages		
Attempted vaginal penetration with penis	8.0	8.6	13.2
Vaginal penetration with penis	26.3	34.2	44.2
Attempted anal penetration with penis	0.4	3.8	1.1
Anal penetration with penis	1.2	2.9	1.6

About a third (34.3 per cent) of offenders having no prior record and about two in five sexual recidivists (42.8 per cent) had been sentenced for acts involving completed or attempted vaginal penetration with a penis. In contrast, close to three in five non-sexual recidivists (57.4 per cent) were convicted of sexual offences involving similar acts. These findings, which are congruent with those concerning the use of physical coercion and the extent of physical injuries sustained by victims, indicate that non-sexual recidivists, on average, committed more serious sexual offences and were more dangerous than were either first-time offenders or sexual recidivists. For sexual acts of this kind, the survey's findings suggest that having a prior criminal record is at least if not more significant than the fact of whether recidivism had involved previous convictions for sexual offences.

Sexual Acts Committed Against Male Victims	Previous Criminal Record		
	None	Offences	Other Offences
	Non-Accumulative Percentages		
Attempted anal penetration with penis	4.0	4.3	6.1
Anal penetration with penis	12.0	26.1	9.1

Fewer children had been victims of acts of buggery or attempted buggery. The findings from the National Corrections Survey concerning the distribution of these acts in relation to recidivism are less clearcut than those in this regard involving completed and attempted vaginal penetration with a penis. Fewer first-time offenders than either of two categories of recidivists had attempted acts of anal penetration with a penis. A substantially higher proportion in each category had been sentenced for completed acts of anal penetration with a penis with acts of this kind having been committed by over one in four sexual recidivists (26.1 per cent).

The findings of the National Corrections Survey clearly show that **a substantially larger proportion of female than male victims had more serious sexual offences committed against them by convicted male child sexual offenders.** In the case of male victims, a majority of the sexual acts consisted of touching

the sexual parts of the body, oral-genital contacts or acts of exposure. In contrast, well over half of the sexual acts against female victims involved attempted or completed penetration of the vagina or anus.

In some Canadian research studies on sexual offences, it has been concluded that serious sexual acts are seldom committed against children. In one such study that contributed numerous widely cited publications, it was noted in one report that:

> "... sexual acts with children are usually seen in terms of violence - the rape or murder of a child - although these are extremely rare occurrences. However rare, the very human tendency to fear the worst has created out of these sex-violence cases the archetype for all sexual contacts with children. In actuality, force and coercion hardly ever play a part in pedophilic acts.
>
> ... The great majority of sexual acts in heterosexual pedophilia consist of the same kind of sex-play as is found among prepubertal children, that is, looking, showing, touching, kissing, fondling ... Penetration and intra-vaginal coitus is rare among sexual acts with children."[3]

The findings of the National Corrections Survey in relation to the sexual offences committed by convicted male child sexual offenders do not support the observation that serious sexual acts against children are "extremely rare occurrences". A substantial proportion of the offences documented was not only of a serious nature, but as findings given subsequently show, their commission frequently involved threats and the use of force, and a breach of responsibility by persons who were related or in positions of trust to the child.

Use of Threats and Force

In this survey, a similar classification was used as that adopted in the other surveys concerning the types of threats and coercion involved in the commission of sexual offences. Threats included those situations in which a victim submitted because he or she was afraid of the offender. The category "victim was forced" included acts of physical coercion, direct assault and the brandishing or actual use of a weapon.

The use of intimidation and coercion against victims varied in relation to the types of offences for which offenders were currently convicted and whether they had a previous criminal record. While about a third (35.3 per cent) of first-time offenders had used some form of coercion against victims, the proportion resorting to threats and force rose to 45.9 per cent by sexual recidivists and to 50.4 per cent by non-sexual recidivists.

The use of threats and force also varied by the types of sexual acts committed. In this regard, some victims were at considerably greater risk than others in having been threatened or physically attacked before or during a sexual assault. On average, proportionately more female than male victims of convicted male child sexual offenders had been coerced. However, among the different categories of victims, the most vulnerable with respect to having been

threatened or physically assaulted were the female victims of heterosexual recidivists (59.1 per cent) and the male victims (60.6 per cent) of non-sexual recidivists.

Table 38.3

Use of Threats and Physical Force Against Victims of Offences Involving Current Convictions by Previous Criminal Record of Offenders

Prior Criminal Record of Victims Offenders	Victims of Offences who had been Threatened or Physically Forced by Convicted Offenders			
	Male Victims (n = 129)	Female Victims (n = 545)	Multiple Victims (n = 21)	Total (n = 695)
	Non-Accumulative Percentages			
None	27.1	36.5	44.4	35.3
Sexual offences	21.7	59.1	12.5	45.9
Other offences	60.6	49.2	25.0	50.4
TOTAL	34.1	45.3	28.6	42.7

National Corrections Survey

In the National Police Force Survey, threats and force were reported to have been used against three in five victims. In the National Corrections Survey, proportionately fewer female victims had been threatened or forced. There was a sharp contrast in the findings of the two surveys in relation to the experience of male victims. In this instance, the proportions were almost exactly reversed. In the corrections survey, about two in three male victims were reported to have been neither threatened nor forced, while in the police force survey, about the same proportion had been threatened or forced. About a quarter of the offenders having multiple victims had used threats or force in committing sexual offences.

In offences in which some type of force had been used, the coercion typically had involved some form of physical restraint of, slapping, or punching the victim. In about one in 14 cases, weapons had been used (7.2 per cent), the child had been strangled or choked (6.2 per cent) or the offender had threatened to kill the child (7.0 per cent).

The Committee's findings on the use of threats and force against victims by convicted child sexual offenders parallel those of two studies conducted during the 1970s of sexual offenders incarcerated in federal penitentiaries, of whom between a half (50.9 per cent) and two-thirds (62.0 per cent) had used threats or force against victims.[4-5] The findings of the three surveys contrast sharply with the assumption prevalent in much of the research literature for this field that "few child molestors are physically dangerous"[6] or that "aggressive attacks on children [which] fortunately are extremely rare".[7]

The findings of the national surveys conducted by the Committee indicate that while only a small proportion of victims was reported to have been physically injured, considerably more had experienced emotional and behavioural harms, and in a substantial number of the offences committed, the child had been threatened or forced to submit to an older person. In submitting to these acts, there is no doubt that many children did so because they were afraid that further force would be used against them or that they would be physically injured.

The different findings obtained in the various studies about the use of force and the extent of the physical injuries sustained by victims may be partially accounted for by the imprecision of the definitions used, the sources of information relied upon and the aegis under which such research was conducted. In many reports reviewed by the Committee, it was found that, while broad generalizations had been reached about the infrequent use of coercion and the minimal harms incurred by young victims, precise documentation about these circumstances was usually notable by its absence.

The general research literature on sexual offenders, for instance, has typically found that relatively few homosexual offenders resort to violence against victims. Few of these studies, however, have assessed the findings obtained in relation to the circumstances of how other types of sexual offences were committed nor have they dealt specifically with homosexual offenders having children and youths as victims. On the basis of information obtained in the National Corrections Survey, the conclusions concerning the non-violent character of homosexual offenders are not confirmed. About one in four first-time offenders and sexual recidivists committing homosexual offences had threatened or physically assaulted victims and some form of coercion had been used against three in five victims of non-sexual recidivists in this group.

Much of the information on these issues in the research literature has come directly from reports provided by offenders themselves who had been charged, were awaiting sentencing, or had been convicted. The professional staff to whom this information was given often included persons under contract or in the employ of enforcement or correctional services. Such persons are in vital positions of authority in relation to decisions which are taken affecting the welfare of offenders. In a situation in which assessment, treatment and the prospect of punishment or discharge are inextricably bound together, it is not surprising, as a number of observers have noted, that some offenders may not be wholly forthright in recounting accurately the circumstances of the offences committed.[8-10] In this regard, a psychiatrist who had assessed dangerous sexual offenders who were in custody in British Columbia noted that:

> "The free flow of communication which is expected to occur in therapy groups is invariably restricted to greater or lesser degree by the unwritten 'contract' and by the group's dependency on the therapist. The patient is extremely aware of the boundaries for self-relevation ... the patient will quickly perceive certain things are to be kept out of the communication and will reveal only what he wishes to reveal and what he senses the therapist wants to hear ... the therapist, with his power of reporting and assessment,

has very real power over the inmate's future. The ever-present fear of damaging one's chances for parole naturally inhibits free communication . . . for their day-to-day survival in the institution and to obtain an early release, inmates become adept at numerous games."[11]

On the basis of a broadly undertaken review of the general and Canadian research literature concerning the assessment and treatment of child molesters, a psychologist concluded that:

> "In summary, the psychological test data portray child molesters as unassertive, guarded, moralistic, and guilt-ridden. It is unclear as to what extent the expression of these traits are due to the child molesters' personalities and to what extent they are a result of the child molesters' attempts to convince institutional staff and supervisory personnel of their nondeviance."[12]

While the reasons why such sharp differences occur in the findings of various reports concerning the use of coercion by child sexual offenders may not be fully ascertainable, the Committee concludes on the basis of the findings of the national police and corrections surveys that the use of threats and force are integral elements in a substantial proportion of the sexual offences against children and youths known to the authorities.

Physical Injuries

While the findings concerning the physical injuries sustained by victims of convicted offenders were generally comparable to those obtained in the other national surveys conducted by the Committee, sharp variations occurred in this regard in relation to the types of offences committed and whether offenders had prior convictions. Overall, about one in eight victims (12.4 per cent) had been physically injured. The proportions of victims injured by the types of offences committed were: victims of homosexual offenders, 7.8 per cent; victims of heterosexual offenders, 13.0 per cent; and offenders having two or more victims, 23.8 per cent. The survey's findings also indicate that there was an association between recidivism and the proportion of victims who had been physically injured. The distribution in this regard was: offenders having no previous convictions, 8.8 per cent; sexual recidivists, 10.7 per cent; and non-sexual recidivists, 18.4 per cent.

In comparison to other convicted offenders for whom information was obtained, fewer homosexual offenders having no prior convictions and homosexual recidivists were reported to have physically harmed victims. However, proportionately more victims of homosexual offences had been physically injured by non-sexual recidivists. Although comparable trends occurred in the distribution of victims injured by heterosexual offenders in relation to their prior criminal record, in each instance, proportionately more female victims had been hurt. Proportionately more of the group of offenders having multiple victims had physically injured victims than had other offenders.

Table 38.4

Victims who were Physically Injured by Currently Convicted Offenders in Relation to Previous Criminal Record of Offenders

Prior Criminal Record of Offender	Victims who were Physically Injured by Currently Convicted Offenders in Relation to Previous Criminal Record of Offenders			
	Male Victims (n=129)	Female Victims (n=545)	Multiple Victims (n=21)	Total (n=695)
	Non-Accumulative Percentages			
None	6.0	9.2	11.1	8.8
Sexual offences	4.3	11.4	37.5	10.7
Other offences	15.2	18.8	25.0	18.4
TOTAL	7.8	13.0	23.8	12.4

National Corrections Survey

The findings concerning the hospitalization of victims parallel those for the distribution of victims who were physically injured. On average, 3.9 per cent of victims had been hospitalized. The proportions in relation to recidivism were: offenders having no previous convictions, 1.0 per cent; sexual recidivists, 3.1 per cent; and non-sexual recidivists, 8.3 per cent.

The findings concerning the distribution of physical injuries sustained by victims are consistent with those concerning other aspects of the circumstances of the sexual offences committed against children and youths. Proportionately more recidivists having previously committed sexual and non-sexual offences than first-time offenders had committed more serious sexual acts, had resorted more frequently to coercing victims and had physically injured more victims. While in the review of previous and current convictions of sexual recidivists given in Chapter 40, *Recidivism*, it is noted that there are serious limitations in reaching valid conclusions exclusively from these sources of information, the related findings concerning the sexual acts committed, the use of coercion and the injuries sustained by victims appear to confirm that in the sequence of offences committed by sexual recidivists there is a progression from minor to more serious acts having been committed.

The survey's findings indicate that having a prior criminal record of convictions for sexual offences is not by itself a sufficient measure of determining which types of sexual offenders may be more dangerous than others to victims. On average, non-sexual recidivists had committed more serious acts and used more violence than had sexual recidivists. The findings suggest that having a prior criminal record of any kind is a more accurate measure of the likelihood of violent sexual acts being committed than whether offenders had only previously committed sexual offences.

Sex of Convicted Offenders

Most of the Canadian research on convicted sexual offenders has dealt exclusively with males who have been charged or sentenced. In the National Corrections Survey, eight offenders (1.1 per cent) were women. This gender ratio is about two-fifths lower than that documented in the National Police Force Survey (1.8 per cent, females); it is well less than half of that reported in the National Population Survey (2.8 per cent). The findings suggest that the sex of the assailant may be a selective factor that intervenes between the occurrence of offences and the conviction of offenders.

Of convicted male offenders having single victims, four in five (80.1 per cent) had committed heterosexual offences and one in five (19.9 per cent) had committed a homosexual offence. This distribution is virtually identical to that found in the four national surveys conducted by the Committee in which 80.9 per cent of the offences were heterosexual and 19.1 per cent were homosexual. The gender of the victims of the eight convicted female offenders was: four males, three females, and one case in which victims of both sexes were assaulted.

Because the circumstances of the sexual offences committed by convicted females differ from those of male offenders, these incidents are reported as case studies.

Case Study 1

As a child, this 39 year-old offender was brought up by an aunt and uncle who were reported to have been heavy drinkers. The children in the family included her three natural siblings, a step-brother, a step-sister and an adopted brother. Upon completing Grade 10, she left home, married twice, and when she started committing the offences for which she was later arrested, she was living with her 12 year-old son and was sexually active with a male partner. She held a part-time job.

The sexual offences for which she and her partner were arrested and convicted occurred over a period of about three years. The acts started when her partner invited her and some female friends to engage in a menage-a-trois. On one occasion, the offender brought along her 12 year-old son and a female friend of the same age. Her partner expressed his sexual interest and invited them to return. Soon, the offender had befriended another young girl (eight years-old), and involved her in the relationship. Their sexual acts included: lesbian acts with the girls, including oral sex; intercourse with her son; and attempted intercourse by her partner with one of the female victims. The children's co-operation was obtained by giving them alcohol, drugs and money. The children were shown pornographic films and played with pornographic playing cards during the episodes. Photographs of the nude children were taken by the offender.

Following her arrest and that of her male partner, the offender was convicted on two counts of gross indecency and of having committed incest. She was sentenced to five years' imprisonment, and following admission, she was placed in protective custody. Her medical assessment indicated that she was

addicted to alcohol and heroin. When the case was reviewed, she had not received medical or psychiatric treatment.

Case Study 2

In addition to having completed high school, the offender, a 34 year-old woman, had received two years of training at a business school. She was the middle child in a family of three children, and until she was 16, she lived with her parents and siblings. Following her parents' divorce, and after she had become pregnant, she married a boy of approximately her own age. She had two children with whom she has had no subsequent contact (they were given up for adoption). The offender had one previous offence — theft over $200. She was living with her second husband and her 17 month-old adopted daughter when the offence for which she was currently convicted occurred.

Following an intense argument with her husband, the woman ran upstairs to her child's bedroom and shut the door. When her husband heard the child crying, he entered the room and discovered the offender dripping with blood from her mouth and hands while the child lay bleeding in the genital area. The father immediately took the child to hospital where evidence was found of a bite, bruising and breakage of the skin. It was also discovered that the victim had suffered previous abuse to the genital area.

Charges were laid five days following the incident; the offender was convicted of indecent assault on a female and assault causing bodily harm. She was sentenced to a three month custodial sentence and one year on probation with reporting conditions. Both a pre-sentence report and a psychiatric assessment were ordered. The psychiatric assessment found the offender to be psychotic, schizoid, suicidal, hostile and having signs of inadequate social skills. She was diagnosed as manic depressive. Treatment was recommended, and on sentencing, this was made a condition of probation.

The offender was committed to — , where she served her sentence at her own request. While incarcerated, she was placed in protective custody. Following her release, she received some treatment from the medical staff of the correctional facility, assistance which was also complemented by an external facility specializing in the treatment of deviant sexual behaviour. This treatment included group counselling, individual counselling and drug therapy.

When she was released on probation, the conditions set were that she obtain psychiatric treatment and refrain from seeing the victim without another adult being present. She received individual counselling on a regular basis until she left the province against the advice of her physician. She returned to live with her husband and remained unemployed. The offender was denied custody of the victim who was made a ward of the Crown.

Case Study 3

This 18 year-old woman grew up in an unsettled home in which she is reported to have received little affection from her parents. Her father, an alcoholic, was chronically unemployed and the family was supported by means of provincial welfare. The homes where this woman lived as a child with her 11 siblings were condemned several times by local Departments of Public Health.

Due to parental neglect, the local child protection agency assumed custody when she was age 13 and she was placed in a foster home for a year. Her schooling ended with the completion of Grade 6. When the offence for which she was currently convicted occurred, she was living with her parents and four siblings. Her previous convictions included: damage to property, causing a disturbance, drinking under age and threatening a teacher with a knife.

The offence for which she was convicted of committing an act of gross indecency took place in a hotel room with a group of friends that included two male accomplices and the victim, a 14 year-old boy. The victim was physically restrained by the two accomplices who also threatened him with a broken beer bottle while the offender masturbated. The victim resisted, but suffered no physical injuries. Escaping from the hotel room, he told his grandmother who called the police.

Upon conviction, the offender was sentenced to two years' probation with reporting conditions. She was warned not to contact the victim or his family. While on probation, the offender lived with three of her siblings and one of her siblings' boyfriends. She frequently changed jobs, usually being employed as a waitress.

Case Study 4

This 36 year-old woman was convicted of contributing to juvenile delinquency. An only child, she was raised by a single, unemployed mother who received welfare assistance.

After leaving home, this woman had married twice, the first marriage ending in divorce, and the second involving the death of her husband three weeks after the wedding. Subsequently, she lived alone and supported herself by means of part-time employment as a skating instructor. It was in this capacity that she met a 14 year-old male student. They became lovers and had intercourse. The consensual relationship continued for six months with most of the sexual acts occurring in the woman's home. Their activities were discovered when the boy's parents became suspicious of his extended absences from home. Questioning their son, he told them what had happened.

The boy's parents laid charges against the offender who was arrested and subsequently convicted. The offender was sentenced to one year probation with reporting conditions. Probation conditions included reports to her probation officer and prohibition from association with the victim. The conviction was her first offence.

Following her conviction, the offender violated her probation conditions by contacting the victim and was warned by the court. While on probation, she remarried.

Case Study 5

This 31 year-old offender had completed Grade 10, married and had children, and when the offence for which she was convicted occurred, she was living with her common law husband.

The offender and her husband enticed young boys to their home, and following seduction and coercion, the victims committed acts of anal penetration with a penis on the offender. The offender was convicted of committing bug-

gery and acts of gross indecency involving two 12 year-old male victims. She was sentenced to 18 months' imprisonment.

Case Study 6

When she was a child, this 16 year-old girl was sexually assaulted by her father over a period of years, as were her two sisters. Her father was subsequently charged with incest and received an 18 month sentence and probation. The offender, still a teenager, was living with her mother, father and a 10 year-old brother when the offence was committed.

The offence occurred while the offender was babysitting a four year-old boy in his home. The sexual activity was reported to have been initiated by the victim asking to see the offender naked. The offender then proceeded to fondle and kiss the child and expose her nude body, while the victim, in return, sexually fondled the offender. They were discovered when the victim's seven year-old sister walked into the bedroom and found the victim lying on top of the offender.

The offender was charged with contributing to juvenile delinquency and was sentenced to two years on probation. The conditions of her probation were that she obtain psychiatric counselling, report to her probation officer every two weeks, remain in the jurisdiction, and refrain from being alone with a child under the age of 14 years. While on probation, she lived with her family and had a series of short-term jobs. A warrant was issued for her arrest when on one occasion she failed to report to her probation officer.

Case Study 7

This 31 year-old woman was convicted of four counts of contributing to juvenile delinquency on the basis of sexual offences against five females under the age of 16. When the offences occurred, she was living with her second husband and two children from her previous marriage. Her husband was reported to have had a long criminal record.

The offences committed by the woman and her husband involved approaching young girls on the street, usually in front of bars. The couple took their victims for drives in their car, spoke of sexual acts, and seduced them by giving them alcohol. The victims were reported not to have resisted; no physical injuries were sustained.

The offender was arrested and subsequently convicted. She was sentenced to two years' probation and a $200 fine. The conditions of probation were: remaining within the jurisdiction; prohibition of alcohol consumption; and no involvement with children under 16 years. The offender did not work while on probation. She continued to live with her husband who was under investigation for the sexual abuse of the offender's son.

Case Study 8

As the second of five children, this 29 year-old woman grew up in a family in which relations were assessed as being poor. She completed Grade 10. Her father, a miner, was described as an alcoholic. At age 24, the offender was admitted to hospital for a drug overdose that was diagnosed as an attempted suicide.

When the sequence of sexual offences occurred, the offender was living with her second husband and their three daughters, aged seven, 10 and 11. The victim was the 10 year-old daughter. The offence involved abuse by both the child's mother and her step-father. The step-father initiated and maintained sexual assaults against the child that included acts of fondling, touching the genitals, oral-genital contact, and forced bestiality by the victim with a dog. The offender, described as passive and dependent, felt she could not refuse to assist her husband, nor did she wish to leave him. The offence was discovered when the offender told a child protection worker that she wanted to end the situation.

The offender was charged with indecent assault on a female and sentenced to 18 months in a correctional institution. The court recommended that the offender receive psychiatric treatment. The offender's husband was convicted and sentenced to imprisonment. The child was taken into custody by the Crown.

Following sentencing, the offender was institutionalized. She was severely beaten by other female inmates and was placed in protective custody. The results of a psychological assessment indicated that she was passive, dependent, low in self-esteem and ignorant of sexual matters. It was concluded that her criminal behaviour was a result of a personality disorder combined with her domestic and social circumstances. Her treatment included assertiveness training and personal counselling for low self-esteem and alcohol problems.

While on probation, the offender initiated divorce proceedings against her husband. Following her release, she rarely worked and relied for support on a combination of social assistance and the men with whom she lived.

In five of the eight case studies, the convicted female offender had been involved with male accomplices, usually a husband, common law partner or friend. The accounts suggest that in most instances, the woman complied with the wishes of her male accomplice(s) in sexually assaulting young victims. In the other three cases, one woman was mentally ill, one had been a victim of incest, and one had had a consensual affair with a male adolescent.

In one respect or another, all of the convicted female offenders had come from unstable family backgrounds, several had grown up in poverty, and six in eight had had broken marriages and/or several sexual partners. The victims were strangers in only one case, that involving the luring of girls on the street. Only one of the victims had been physically injured and, in this case, the child's mother had been mentally ill. In several cases in which the use of alcohol or drugs were factors affecting the offender's mental state, no assessment or treatment was reported to have been recommended at any point following the offender's apprehension. Two of the convicted female offenders were recidivists, in both instances, having previous convictions for non-sexual offences.

Age of Convicted Offenders

Although there is a masking effect introduced by the fact that the exact age of the convicted offenders was not obtained in one in five cases (20.3 per

cent), the age distribution of those for whom this information was available represented an expected profile. In contrast with the findings of the National Population Survey and the National Police Force Survey in which about a third of the suspected or known offenders were under age 21, only 14.9 per cent of convicted male offenders were in this age category. Considering the variable age limits established by provincial child welfare legislation and the exercising of discretion in the sentencing of young offenders, it is perhaps surprising that about one in seven convicted offenders was under 21 years-old.

Table 38.5

Age Distribution of Convicted Male Child Sexual Offenders

Age of Convicted Offender	Sex of Victims of Convicted Offenders		
	Male Victims (n=129)	Female Victims (n=545)	Multiple Victims (n=21)
	Per Cent	Per Cent	Per Cent
Under age 21	10.1	16.4	4.8
21 - 30 years	18.6	27.5	33.3
31 - 40 years	23.2	21.1	19.0
41 - 50 years	12.4	10.2	9.5
51 - 60 years	6.2	3.6	14.3
61 and older	4.7	1.6	4.8
Not reported	24.8	19.5	14.3
TOTAL	100.0	99.9*	100.0

National Corrections Survey.

* rounding error

In comparison to the age distribution of offenders in the population and police force surveys, proportionately more convicted offenders were older. In the age category 21-40 years, the respective proportions were: population survey, 43.0 per cent; police force survey, 40.0 per cent; and corrections survey, 47.5 per cent. In the age category 41 years and older, while about one in nine offenders (10.8 per cent) in the population survey was an older male, substantially more offenders in the other two surveys were older persons (police force survey, 18.4 per cent; corrections survey, 17.3 per cent).

Three age-related sub-groupings were identified in the National Corrections Survey. There was a sharp decreasing gradient with age among offenders having committed heterosexual offences. Of offences in which males were victims, a more even age distribution occurred, and for the small group having multiple victims, the age profile was high-low-high. On average, convicted offenders committing homosexual offences were older than those committing heterosexual offences.

In relation to whether offenders had been previously convicted, not unexpectedly, more first-time convicted offenders (25.3 per cent) were under age 21 than were recidivists (8.1 per cent, previous sexual offences; 16.8 per cent, previous non-sexual offences). Substantially fewer offenders having previous convictions for non-sexual offences (14.6 per cent) were 41 years-old or older than the proportion of offenders in the other two categories (24.9 per cent, no previous record; and 26.0 per cent, previous sexual offences).

While the findings on age distribution indicate that a smaller proportion of sexual recidivists than that of the other two categories of offenders was under age 21 and that in other respects they were more comparable to offenders having no prior criminal record, when the types of offences involving current convictions are considered, sharp differences emerge along these lines. For offenders having no prior record and previous sexual offence convictions, substantially more of those convicted of heterosexual offences were younger than those convicted of homosexual offences. Offenders having multiple victims fell in between these two groupings. These sharp age differences, however, disappear among offenders who were previously convicted of non-sexual offences, a majority of whom were younger offenders. These findings suggest that it is the type of offence committed rather than an offender's prior record which accounts for the different age groupings of offenders.

When the findings of the several national surveys are considered together, it is evident that an offender's age is a mitigating factor in relation to charges being laid and convictions imposed. The principle of leniency towards young first-time offenders is well recognized in both civil and criminal legislation and its application is documented in the findings of the national surveys conducted by the Committee. Fewer younger child sexual offenders were convicted than those in this age category who had actually committed offences. A relatively large proportion of the offenders was middle-aged, a fact that by itself indicates the need for an assessment of the capabilities of these males for social adaptation either while under supervision or on probation, and when they return from imprisonment to the community.

Social Background

In the research protocol used to assemble information for the National Corrections Survey, a sizeable number of items was included concerning the social and familial backgrounds of convicted child sexual offenders. Although on the basis of the pretesting of the research protocol it was found that there were substantial gaps in the completion of information for certain items, most of these items were retained since only a few jurisdictions had been involved in this initial phase of the research. However, the results of the pretest were highly accurate in relation to identifying the types of information which it was not feasible to collect from the 10 participating correctional services.

These gaps in missing information were especially prominent concerning the offenders' backgrounds prior to having committed the offences for which they were convicted. In many instances, information of this kind was missing in the available official records for between half and three-quarters of the cases reviewed. To preclude presenting misleading and potentially unrepresentative findings for items for which incomplete information was obtained, only those for which the numerators were somewhat more complete are given.

Of the seven in eight offenders (87.7 per cent) for whom information was available concerning the families in which they had grown up as children, the majority had had both natural parents present during this period of their lives. The members of the nuclear families of these males who were later convicted of sexual offences against children included: natural mothers (93.5 per cent); natural fathers (89.0 per cent); brothers (91.9 per cent); and sisters(92.6 per cent). On average, the convicted offenders had five siblings. At face value, this demographic sketch depicts little that is out of the ordinary, except perhaps for the apparently high level of structurally stable marriages and the larger than average size of the families. This information is barren, however, in relation to providing insights about the emotional dynamics of these families. The findings contrast sharply with those of a number of completed research studies which have found that a relatively high proportion of convicted sexual offenders has grown up in broken homes or has been under the care of someone other than a natural parent(s). In the National Corrections Survey, few of the convicted males had come from totally broken homes and virtually all had brothers and sisters.

A partial measure of the potential instability of the offenders' families is provided by their reported contacts with child protection services. At sometime during their childhood (for reasons for which information was incomplete), one in eight (12.0 per cent) convicted offenders had been removed from his home by a child protection agency. There is no comparative baseline with which this experience can be assessed in relation to that of other types of convicted offenders, or to that of persons who have not been in conflict with the law but who may have been in similar social and economic circumstances.

Either at the time of the conviction or previously, well over half of the convicted child sexual offenders had had an established heterosexual association. In this regard, their experience with broken marriages or common law partnerships was not unusual in relation to that of other Canadian adults.

When they were convicted, two in five convicted male offenders (39.8 per cent) were single, slightly less than three in five (57.4 per cent) were or had been married, and information was not reported for the remainder (2.8 per cent). In relation to their marital status, the experience of convicted male child sexual offenders closely approximated that of sexual offenders having adult and child victims documented in the 1974 federal penitentiary survey.[13]

The marital status of child sexual offenders varied sharply in relation to the gender of their victims. While about three in five offenders having female victims (61.9 per cent) or multiple victims (57.1 per cent) were or had been

Table 38.6

Marital Status of Convicted Male Child Sexual Offenders

Marital Status of Convicted Offender	Sex of Victims of Convicted Offenders		
	Male Victims (n=129)	Female Victims (n=545)	Multiple Victims (n=21)
	Per Cent	Per Cent	Per Cent
Single	58.9	35.5	33.3
Married	19.4	35.2	14.3
Separated/ Divorced	14.7	12.0	33.3
Widowed	—	1.6	—
Common law	5.4	13.1	9.5
Not reported	1.6	2.6	9.5
TOTAL	100.0	100.0	99.9*

National Corrections Survey

* rounding error

married or had had a common law partner, almost an equal proportion of the offenders having male victims (58.9 per cent) had never married.

Because many of the convicted offenders in the survey were either serving sentences or were on parole, the effects of the economic depression of the early 1980s were unlikely to have affected their employment status prior to sentencing. Regardless of the sex or number of their victims, only two in five convicted male child sexual offenders had had full-time employment when they had committed sexual offences for which they were later convicted. About an equal proportion had an unstable job status that included: part-time or seasonal work; unemployment; had never worked; or they were students, disabled, or retired.

In the 1974 Canadian Penitentiary Service Survey of sexual offenders, seven in 10 were unskilled workers, one in nine a skilled worker and the remainder had had an assortment of other types of employment.[14] Despite differences in how the two studies were undertaken, the findings of both are consistent in indicating that **many convicted sexual offenders were on the fringes of the work place, lacked the requisite experience or skills for full-time employment, or had limited job training.** Their work histories suggest that many of the offenders may have subsisted on relatively low incomes. Additional factors which may have affected their employment status, as reported in Chapter 39, *Treatment*, were the high proportion that had at some time been hospitalized for mental illness and that were dependent on alcohol and drugs. In addition to the stigma of having been convicted of a sexual offence against a

child or youth, it can be expected that the social adaptation of these offenders while under supervision or on their return to the community would be sharply hindered by their unstable work careers and limited job skills.

Table 38.7

Employment Status of Male Child Sexual Offenders Prior to Conviction

Prior Employment Status of Convicted Offenders	Sex of Victims of Convicted Offenders		
	Male Victims (n=129)	Female Victims (n=545)	Multiple Victims (n=21)
	Per Cent	Per Cent	Per Cent
Employed	40.3	40.2	38.1
Part-time/ seasonal work	5.4	12.6	4.8
Unemployed	22.5	14.8	9.5
Other	12.4	9.3	19.0
Not reported	19.4	23.1	28.6
TOTAL	100.0	100.0	100.0

National Corrections Survey. 'Other' category includes: never worked, student, disabled, retired.

Type of Association

The classification of the types of association between victims and offenders specified elsewhere in the Report does not refer to the sexual acts committed, but indicates the nature of the relationship between the victim and the offender. Thus, in the category 'relationship of incest', while the blood relatives specified in this sexual offence in the *Criminal Code* are included, sexual acts other than intercourse may have been committed.

Most of the convicted child sexual offenders had known their victims prior to committing the offences. Overall, only one in four offenders (26.9 per cent) was a stranger, with this type of relationship being more common when boys than girls had been victims. In contrast, only one in seven offenders (14.3 per cent) having two or more victims was a stranger.

One in 10 offenders (10.4 per cent) had a legal relationship of incest to the child. Of this group, 63 of 72 were natural fathers. **Fathers — natural, step, foster, adoptive and common law — constituted about one in five of the convicted male child sexual offenders (18.7 per cent).** Of the 17 persons who held positions of trust in relation to the child, four were teachers, 11 were babysitters and two were respectively a youth probation officer and a social worker.

Table 38.8

Type of Association between Victims and Convicted Male Child Sexual Offenders

Type of Association	Male Victims		Female Victims		Multiple Victims	
	No.	%	No.	%	No.	%
Relationship of incest	3	2.3	66	12.1	3	14.3
Other blood relative	4	3.1	21	3.9	3	14.3
Guardianship position	—	—	46	8.4	1	4.8
Other family member	4	3.1	28	5.1	1	4.8
Position of trust	7	5.4	12	2.2	—	—
Friends, acquaintances	27	20.9	106	19.4	4	19.0
Other persons	16	12.4	37	6.8	2	9.5
Strangers	41	31.8	143	26.2	3	14.3
Not reported	27	20.9	86	15.8	4	19.0
TOTAL	129	99.9*	545	99.9*	21	100.0

National Corrections Survey.

* rounding error

Information was not available about the type of association between the victim and offender for one in six cases (16.8 per cent). It is presumed, however, that most of these offenders fell into the 'other' category or were strangers. In general, the types of association between convicted offenders and their victims were comparable to those documented in both the national population and police force surveys. Exceptions included proportionately more persons in positions of trust, and fewer friends and acquaintances who had been convicted. There was a sharp contrast, however, involving the small group of convicted offenders having two or more victims. Two in five of these offenders (38.2 per cent) were relatives or family members (three natural fathers, a step-father, an adoptive father, two uncles and a cousin).Of persons convicted of having committed sexual offences against two or more children, most were either responsible for their welfare or were persons well known to the children.

In the review of the nature of the relationship between the occurrence of recidivism and the type of association between victims and offenders, the categories specifying family members, relatives and persons in guardianship positions were grouped together to provide a single measure of persons responsible for the protection and welfare of the child. The two other categories used were other persons known to victims and strangers.

The survey's findings indicate that there were clearcut differences between the occurrence of recidivism and the type of association between victims and offenders.

Type of Association Between Victim and Offender	Previous Criminal Record of Convicted Offenders		
	None	Sexual Offences	Other Offences
	Per Cent	Per Cent	Per Cent
Family member	33.2	16.4	24.6
Known to victim	46.0	44.6	48.6
Stranger	20.8	39.0	26.8
TOTAL	100.0	100.0	100.0

Regardless of the type of sexual offence committed, a majority of offenders (79.2 per cent) having no prior criminal record had been known to victims. By the types of offences committed, the proportions in this category were: 75.5 per cent, homosexual offenders; 79.5 per cent, heterosexual offenders; and 88.9 per cent, offenders having multiple victims. On average, somewhat fewer non-sexual recidivists (73.2 per cent) were known to victims but sharper variations occurred in this regard in relation to the types of sexual offences committed. While about three in four offenders having multiple victims (75.0 per cent) and those having committed heterosexual offences (76.4 per cent) were known to victims, only over half (54.5 per cent) of non-sexual recidivists who had committed homosexual offences were previously known to the male victims of the offences for which they were currently sentenced.

In contrast to first-time convicted offenders and non-sexual recidivists, proportionately more sexual recidivists, about two in five (39.0 per cent) were strangers to victims. In relation to the types of offences committed, the proportions of offenders who were strangers were: 30.4 per cent, homosexual offenders; 44.8 per cent, heterosexual offenders; and 12.5 per cent, offenders having multiple victims.

In comparison to whether offenders were known to victims, the relationship between recidivism and the type of association was even more pronounced in the instance of offences committed by offenders who were family members. Offenders who were in a familial position of trust to the child constituted one in six sexual recidivists (16.4 per cent), one in four non-sexual recidivists (24.6 per cent) and one in three offenders (33.2 per cent) having no prior criminal record. The survey's findings indicate clearly that **in comparison to offenders convicted for the first time and non-sexual recidivists, substantially fewer sexual recidivists were family members and proportionately more of them were strangers.**

Assaults by Groups

About one in 14 of the convicted child sexual offenders (7.3 per cent) had had one or more accomplices in committing sexual offences against children (7.1 per cent, female victims; 8.5 per cent, male victims). Although the proportion of gang sexual assaults was comparable to that found in the cases reported to public services (8.1 per cent, police, hospitals, child protection services), there was an inversion in the findings obtained in the National Corrections Survey in relation to the sex of the victims.

In the National Corrections Survey, one in 12 convicted offenders (8.5 per cent) had had one or more accomplices in offences committed against male victims in contrast to one in 22 suspected or known offenders (4.5 per cent) who had come to the attention of the police, hospitals or child protection services. This finding is noteworthy since it indicates that group homosexual offences are not an isolated occurrence and that attacks of this kind are likely to be considered serious aggravating factors on sentencing. The gravity with which offences of this kind are seen appears to be further confirmed by the finding that while in cases known to public services group sexual assaults involved proportionately twice as many female as male victims, among convicted child sexual offenders, such offences against male victims for which male offenders had been convicted occurred about a fifth more often than those against females.

In the National Corrections Survey, two in five of the accomplices (40.6 per cent) were the convicted offenders' friends and one in five (18.8 per cent) was a brother. Charges were laid in nine in 10 cases of this kind (90.6 per cent); four in five of the accomplices (81.3 per cent) were subsequently convicted. Twenty-one of the 695 convicted male child sexual offenders (3.0 per cent) had committed sexual offences against two or more victims. In this group, there was one instance in which two or more offenders had sexually assaulted two or more victims.

Summary

1. Of 703 convicted child sexual offenders, 695 were males and eight were females. Of male offenders, 545 had female victims, 129 had male victims and 21 had multiple victims. About one in three offenders (37.7 per cent) had no prior criminal record and one in four (25.8 per cent) was a sexual recidivist. Recidivism varied in relation to the types of offences committed, respectively: 21.5 per cent, heterosexual offenders; 39.5 per cent, homosexual offenders; and 52.4 per cent, offenders having multiple victims.

2. Male victims, on average, were younger than female victims. With the exception of the female victims of sexual recidivists, the male victims of homosexual offenders were younger than the female victims of first-time offenders and non-sexual recidivists.

3. Less than half of the sexual offences were committed in private locations and about a third in public locations. Females were twice as likely as males to have been victimized in their own homes, and there was a greater likelihood of offences committed in the home having younger victims.

4. In comparison to the sexual acts committed against children and youths documented in the other national surveys conducted by the Committee, proportionately more sexual offences committed by convicted offenders had involved attempted and completed acts of vaginal and anal penetration. For half of the females, some form of vaginal penetration had been attempted or completed. Attempted or completed anal penetration had been committed against one in four male victims.

   On average, proportionately more serious sexual acts were committed against female victims than against male victims and acts of this kind were more frequently committed by non-sexual recidivists than by either sexual recidivists or first-time convicted offenders.

5. Two in five victims had been threatened or physically forced by convicted offenders with this happening more frequently to female victims than to male victims. The use of threats and coercion varied in relation to the offenders' prior criminal record being used respectively by: a third of first-time offenders; less than half of the sexual recidivists; and half of the non-sexual recidivists.

6. One in eight victims had been physically injured by convicted offenders. The distribution of victims who were injured varied in relation to the types of offences committed and whether offenders had previous convictions. There was a sharp gradient in relation to recidivism with non-sexual recidivists being more dangerous in this regard than sexual recidivists.

7. Virtually all convicted child sexual offenders were males with 1.1 per cent being females.

8. In comparison with the findings of the other national surveys, proportionately more of the convicted offenders were older, and in this regard, homosexual offenders, on average, were older than heterosexual offenders. In relation to recidivism, the findings suggest that the type of offence committed rather than prior convictions is more likely to account for subgroupings of age differences among convicted offenders.

9. Nine in 10 offenders had grown up in homes having both natural parents and siblings, about one in eight had been taken into custody by a child protection agency, and about three in five were, or had been, married. Prior to having committed the offence, two in five offenders had had some form of full-time employment.

10. Fathers — natural, step, foster, adoptive and common law — constituted about one in five convicted offenders. The majority of offenders were known to their victims with only one in four having been a stranger. In contrast to first-time offenders and non-sexual recidivists, proportionately more sexual recidivists were strangers to victims. A third and a quarter respectively of first-time offenders and non-sexual recidivists were in a familial position of trust to the child.

11. About one in 14 convicted offenders had had one or more accomplices in committing the offences.

In undertaking the National Corrections Survey, the Committee identified several dimensions of how service statistics are typically assembled by the Canadian correctional system. While there is usually uniformity in respect to the types of records maintained within each correctional jurisdiction, several services do not have computerized record systems. Where these systems have been established, the information so transferred is assembled to expedite administrative functions. There is no common basis between correctional systems across Canada in regard to the collection of similar types of information about offenders. **For Canada as a whole, there is no single inventory or register that permits the identification of convicted sexual offenders in relation to the age and sex of victims. Accordingly, there is now no means available to determine on a national basis how many convicted persons are child sexual offenders, rapists of girls or adult women, or sentenced for other types of sexual offences.** In this regard, and in the absence of documentation, it is widely assumed that conditions in federal penitentiaries are harsher for inmates and less conducive to their successful return to the community than detentions served in provincial prisons. However, at least with respect to convicted child sexual offenders, this assumption is a matter of informed opinion, or conjecture, rather than one founded on documentation of the outcomes of different types of incarceration or supervision.

The correctional information systems in use across Canada are offender, not victim-oriented. In this respect, it is not apparent how a sufficient assessment can be made of the relative effectiveness of different sentences or treatments provided unless more complete and comprehensive information is available on a routine basis than is currently the case about these offenders and their victims. As clearly shown elsewhere in the Report, the charges laid or the sentences imposed are imprecise means to serve as a basis of assessing the actual types of sexual offences committed. Many of the sexual offences in the *Criminal Code* are neither age nor sex-specific. In this respect, information relying exclusively on reported sexual offences is wholly inadequate to serve as a means of identifying victims.

In assembling its findings, the Committee found that basic information concerning offenders contained in existing correctional records systems was invariably more detailed and complete than the service statistics which were derived from these case reports. What has evolved, however, in the assembling of these statistics is the collation of haphazardly collected information that is not systematically reviewed in relation to: its completeness; its relevance concerning the efficacy of treatment; the follow-up of offenders on parole; and its utility in regard to documenting the occurrence and consequences of recidivism.

In identifying these deficiencies in the information systems of Canadian correctional services, the Committee reiterates concerns that have been voiced for over a century. Speaking in the House of Commons in 1875 concerning the

need for detailed statistics concerning matters of criminal jurisprudence, Mr. Dymond of North York is reported to have said:

> "... it did certainly seem extraordinary that while since Confederation we had consolidated the criminal laws, and whilst during every session measures had been introduced altering or amending the criminal law, we had no evidence upon which to base conclusions as to whether these amendments were necessary or not. In our present state of darkness we had no information that enabled us to ascertain what crimes were increasing or decreasing ..."[15]

In speaking to the Second Reading of the *Bill to Provide for the Collection and Registration of Criminal Statistics* in 1876, the Honourable Mr. Blake cited:

> "... the importance of our obtaining such statistics as may inform the minds of us who are responsible for those laws which proscribe what are crimes, the penalties for them, the criminal procedure, and the general effect of the laws upon the criminal class, as might enable us, per chance with wisdom, to amend them."[16]

As noted in Chapter 13, *Historical Statistical Trends*, a system of collecting information concerning convicted offenders in custody or under supervision of federal correctional services was established during this period. Since shortly after its inception, however, the federal correctional information system has been the target of severe criticism both in Parliament and in reports of advisory inquiries. In a discussion of the utility of these statistics, Mr. Mills observed in Parliament in 1884 that "it has really no value whatever, the information is altogether unreliable and the classification very imperfect."[17] Almost two decades later, speaking in 1902 on the same issue in Parliament, Mr. Clancy observed "I know no more dangerous thing than a service which stands still. It seems to be seized with dry rot."[18]

Similar conclusions have subsequently been reached in several reports of inquiries appointed to review federal correctional services. The 1938 *Report of the Royal Commission to Investigate the Penal System of Canada* (Archambault Report) observed that "... we find that there is a great lack of uniformity in the compilation of statistics respecting crime in Canada; so much so that it would be dangerous to draw definite conclusions from the present statistical material."[19] The 1938 Royal Commission recommended that "a complete revision of the method of preparing statistical information"[20] be undertaken. These recommendations were reiterated in the reports of federal inquiries issued respectively in 1956 (*Fauteux Report*)[21] and 1958 (*McRuer Report*).[22]

These issues were also addressed in the 1969 *Report of the Canadian Committee on Corrections* (Ouimet Report). This Report concluded:

> "The corrections field in Canada as in most countries has suffered from a lack of comprehensive, continuous and long-term planning based, as far as possible, on empirical information. Planning has tended to be sporadic or limited in scope and little use has been made of research ..."[23]

> The primary need in relation to criminological research is a conviction on the part of both government authorities and the public that research findings are essential in determining policy and in operating the law enforcement, judicial and correctional services. Until recently, policy-making has been based exclusively on common sense and on the impressions picked up by individuals in the course of their work. This is in sharp contrast to what is done in matters involving the physical and biological sciences.[24]
>
> It is also important that research findings be published . . . Publication makes research findings available to other workers for checking. Also, publication of research material enables the public to judge effectiveness of the services.[25]
>
> . . . if research is to have its maximum effect, there should be organized and continuous procedures to ensure that the findings of research will be implemented.[26]
>
> . . . there are limits on the kind and scope of research a public service can conduct. Government research workers are not normally free to publish research findings that are in conflict with government policy. There is often a split in jurisdiction between departments. This makes comprehensive study of a problem difficult. A third handicap suffered by the government research worker is the need to keep up with day-to-day problems faced by the present operating services. This does not leave much time or many facilities for basic research."[27]

Although advised by some senior administrators and experienced criminological researchers before it started its review that it was not feasible to obtain the information being sought and that most jurisdictions would likely be uncooperative, the Committee in fact received valuable and effective assistance from federal and provincial correctional services in the design of the research protocol and the implementation of the National Corrections Survey. While the Committee fully recognizes that more indepth research conducted over a longer period of time is required to provide fuller documentation concerning the difficult issues reviewed, the undertaking of the survey leaves no doubt that it is feasible to conduct such research on a national scale. Those persons who believe that there are insuperable obstacles precluding such research either have apparently not attempted such an undertaking, or they have been prematurely deterred by their preconceptions of what they believed the difficulties to be.

The Committee fully endorses the recommendations of earlier federal inquiries concerning the need for establishing a more effective correctional information records systems concerning problems of national importance such as convicted offenders who have committed sexual offences against children and youths. In the Committee's judgment, there is a need in relation to convicted child sexual offenders to establish a correctional record system that incorporates basic information on:

1. ***The Offender(s)*. Age, sex, education, job skills, work experience, family background, marital status, physical and mental state.**
2. ***The Victim(s)*. Age, sex, relationship to offender.**

3. *Current Conviction.* Listing of specific sexual acts committed, use of threats/force, injuries to victims, accomplices, offences resulting in convictions, sentencing decisions.

4. *Previous Criminal Record.* Specifying convictions, age and sex of previous victims, court disposition, subsequent charges known to have been laid.

5. *Services Provided.* Provision of medical, psychiatric, psychological, vocational, educational services.

In the implementation of this minimum standard correctional information record system, the Committee believes that its requisite components should incorporate the following elements:

6. *National in Scope.* Information about convicted child sexual offenders should be obtained from all jurisdictions — federal, provincial and territorial.

7. *Computerized Storage.* For purposes of efficiency in management and retrieval of information.

8. *Updating of Information.* Upon discharge from custody, completion of probation or parole.

9. *Periodic Review by Participating Jurisdictions.* To assess the more effective operation of the information system.

As specified in Chapter 3, *Recommendations*, the Committee calls for the establishment of a standard national correctional information records system in relation to convicted child sexual offenders and that the development and operation of this system be undertaken jointly by federal, provincial and territorial correctional services.

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Chapter 37: Convicted Offenders

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Chapter 39

Treatment

This chapter reviews the development of treatment services provided in correctional institutions, draws upon the findings of the National Corrections Survey concerning the mental health state of convicted child sexual offenders and the provision of mental health treatment services for them, and presents case studies which illustrate the types of circumstances in which courts on sentencing may make recommendations concerning the need for the assessment and treatment of these offenders.

Development of Services

While it has long been recognized as a complex and contentious issue, a full historical account remains to be written that documents the development and provision of treatment services for convicted offenders by federal and provincial correctional services. This debate, which has received much public attention and has also been a divisive issue within correctional services, has turned upon a number of critical issues, including whether:

1. The treatment services being provided at a particular period were adequate, or should be considerably strengthened.

2. The provision of medical and mental health services should be directly provided by correctional services, or should be given under the aegis of external provincial health institutions, either on an inpatient or outpatient basis.

3. Some prisoners, such as convicted sexual offenders, need treatment, or whether they should be considered to be criminally deviant.

4. If treatment is provided for sexual offenders, whether special programs should be tailored to meet their needs, or they should receive services available to all inmates.

5. Individuals deemed to be in need of medical care, particularly mental health therapy, should be required to obtain such services, or whether this decision should remain a matter of personal choice.

6. The provision of treatment services can be shown to be therapeutically beneficial, or whether no measurable gains are to be realized by the provision of these services, particularly in relation to reducing the level of recidivism.

These issues are not new concerns. They were initially considered in the early reports of the *Directors of Penitentiaries*; since that time, they have subsequently been expanded upon, but not resolved. Dating back at least to 1849 when George Brown led a *Commission of Inquiry* into the operation of the Kingston Penitentiary, a series of public investigations have been conducted into the conditions of the mentally ill who have been under the supervision of correctional services. As a result of the 1849 Inquiry, a new criminal lunatic asylum was established at Rockwood. These new facilities, however, soon proved to be insufficient to house all of the prisoners deemed to need segregated attention.

Writing with a perspicacity which identified issues that have not yet been fully dealt with, the Medical Superintendent of the Rockwood Asylum in 1865 called for a clear medical classification of inmates, their segregation into distinctive groupings for the purposes of management and treatment, and the provision of special services to facilitate their potential cure and rehabilitation.[1] Following Confederation, arrangements were made between the federal and provincial governments concerning the management of criminally insane prisoners. In this regard, the *First Annual Report* of the federal *Directors of Penitentiaries* for 1868 noted that "this arrangement, made by the Provincial with the Dominion Government for the reception into the Rockwood Asylum of the unfortunate lunatics confined in the gaols of Ontario was a most humane one."[2]

However, it is evident at that time that not all prisoners who may have required medical attention were transferred to provincial asylums. The situation of those who were in the Kingston Penitentiary in 1884 was described by the attending surgeon. Of "the inmates of the insane ward . . . most . . . are broken down physically as well as mentally, and so far as restoration to soundness of mind is concerned, [are] utterly hopeless."[3]

These arrangements involving the joint provision of services continued for a number of years. The *1913 Commission* appointed to review the condition of the insane ward in the Kingston Penitentiary proposed two alternatives, the first being to contract all such services to the provinces while the second option would have involved the erection of a separate institution by the federal service for the care of criminally insane inmates. Following World War I, the federal Minister of Justice appointed a *Commission of Inquiry* into the conditions of mentally disordered offenders. The 1921 Commission concluded that:

> ". . . the existing provisions on the subject of insane prisoners are not satisfactory and indicate an obsolete and unscientific view of mental diseases." The Commission recommended that amendments be made to the Penitentiary Act to "authorize the employment, for the examination, treatment or care of

any convict who is seriously ill, either physically or mentally, of such specialists and nurses as are necessary in the circumstances, and the medical supervision of any penitentiary may be entrusted to the faculty of medicine of any recognized university."[4]

The 1938 *Royal Commission to Investigate the Penal System of Canada* (Archambault Report) noted about the decision that was reached concerning the two options put forward in 1913 that "we think the penitentiary administration was wise in adopting the former suggestion and discarding the latter."[5] Among the reasons given by the 1938 *Archambault Report* for supporting this earlier decision were that the establishment of a federal facility would have been too expensive and that "the period of treatment would be broken, because the responsibility of the Government of Canada to maintain the prisoners would terminate with their sentences."[6] Accordingly, some three decades later, the 1938 *Archambault Report* recommended "that the most efficient method of caring for insane prisoners in the penitentiaries is by continuing and expanding the present friendly arrangements that are in effect between the federal and provincial authorities."[7]

During the interval between these two inquiries, treatment services were expanded both within custodial institutions and by provincial mental health services. By 1938, the *Archambault Report* noted that a physician and a dentist were in attendance at all federal custodial institutions. In addition to these services, the Commissioners recommended "that the services of a psychiatrist are also essential if a thorough examination is to be made and proper treatment is to be given to each individual prisoner."[8] The Commission further recommended that "a complete revision of the methods of classification of prisoners should be made, with provision for a thorough medical and psychiatric examination of prisoners."[9]

Provincial forensic services were also developed and expanded during this period. In 1926, for instance, a forensic inpatient service was established at the Toronto Psychiatric Hospital to provide for the psychiatric investigation of suspected criminals.[10] Several decades later, as a result of public concern about several incidents involving sexual assaults against children, and stemming from a meeting convened by the Toronto Daily Star, an outpatient forensic clinic was established at this hospital in 1956.[11] Its objectives were to provide pre-sentencing assessments and treatment, to conduct research and to serve as a teaching facility.

The recommendations of the 1956 *Fauteux Report* (*Committee Appointed to Inquire into the Principles and Services followed in the Remission Service of the Department of Justice*) constituted a significant turning point with respect to the issue of whether special treatment services should be provided for certain classes of convicted offenders. This Committee recommended that "special types of institutions, with specialized treatment, should be provided for alcoholics, drug addicts, sex offenders and psychopaths."[12]

The 1956 *Fauteux Report* also reiterated the recommendations of the 1921 *Commission of Inquiry* and the 1938 *Archambault Report* concerning the need for an adequate assessment of the physical and mental health state of convicted offenders.

> "At the present time psychiatric treatment, in some degree, is available at most federal and some provincial institutions. We recognize that a serious shortage of practising psychiatrists exists, but we must nevertheless record our view that no modern prison system can operate effectively without psychiatric service on a much more extensive basis than now exists."[13]

These recommendations of the 1956 *Fauteux Report* were strongly supported by the 1958 *Royal Commission on the Criminal Law relating to Sexual Psychopaths* (McRuer Report). The latter inquiry recommended that "special provision be made in the penitentiary system for the custody, control and treatment of every sexual offender undergoing preventive detention, and section 666 C.C. be amended accordingly."[14] In reaching this conclusion, the 1958 Royal Commission noted that while:

> ". . . in the present state of medical knowledge it is not possible to speak with assurance about "curing" the class of offenders we are considering,"[15] that nevertheless, "once a person has been sentenced to preventive detention by reason of the manifestation of sexual abnormalities he should be exposed to the best clinical treatment known rather than included in the ordinary prison population."[16]

In 1963, the Commissioner of Penitentiaries introduced a "Ten Year Plan" for the construction of new correctional facilities across Canada, including the establishment of several Regional Medical Centres. Six years later, the *Canadian Committee on Corrections* (1969 Ouimet Report) appointed by the federal Department of the Solicitor General noted that:

> "The ten year plan of the Federal Penitentiary Service contemplates a medical-psychiatric centre within each regional complex. The Commissioner of Penitentiaries has informed the Committee that three major centres will be located at Ste. Anne des Plaines, Quebec, Millhaven, Ontario and in Saskatoon, Saskatchewan. Present plans call for the completion of the centres at Ste. Anne des Plaines and Millhaven by 1972 and completion of the centre in Saskatoon by 1973. Smaller centres are to be established at Mission, British Columbia, and Dorchester, New Brunswick by 1974.
>
> Such medical-psychiatric centres might be used not only for custody and treatment, but for diagnosis and assessment. Mental hospitals, and psychiatric institutes with secure wings such as the Ontario Hospital at Penetanguishene, the Clarke Institute of Psychiatry, and l'Institut Phillipe Pinel might also be used as diagnostic facilities."[17]

The 1969 *Ouimet Report* further recommended that "such facilities are, of course, required and should be available for the treatment of offenders other than those classified as dangerous . . ."[18]

The Committee on Sexual Offences against Children and Youths found on the basis of its general review of the Canadian professional and scholarly

research literature (see Chapter 1) that prior to the issuing of the 1956 *Fauteux Report*, little attention had been paid by researchers to the issue of the treatment of convicted offenders. However, during the decade and a half following the release of the 1956 Report, and in part stimulated by the work of earlier federal inquiries, a small but steady flow of professional and scholarly commentary emerged, most of which dealt with conceptual concerns or described the operation of particular forensic services.[19] Much of this work drew heavily upon research conducted abroad and transposed these findings as though they were applicable to the Canadian scene.[20-37] At this time, only a handful of these reports provided empirical documentation concerning the treatment of convicted offenders in Canadian correctional institutions.

Between 1971 and 1973, the federal Department of the Solicitor General appointed two medical advisory committees whose members included distinguished leaders of the medical profession. *The Advisory Board of Psychiatric Consultants* (Chalke Committee) was established in 1971 in order to develop "a master plan for the further development of psychiatric services" for the Canadian Penitentiary Service. The 1972 *Chalke Report* called for the establishment of five regional psychiatric centres. It also proposed a framework for the administration, provision and evaluation of correctional psychiatric services. Included among its several recommendations were:

> "The greatest problems arise in the area of evaluation of the effectiveness of special psychiatric programs aimed at correction of specific offenders or the modification of behaviour in such a way as to reduce recidivism, criminality, dangerousness, or socially unacceptable conduct.[38]
>
> The Psychiatric Advisory Board must urge the development of an adequate competent research establishment including appropriate relationships between the penitentiary service, parole service and provincial correction service.[39]
>
> Moreover, we urge that it be clearly accepted that Canada is prepared to subject all our correctional undertakings to the most rigid evaluation and set an example to other jurisdictions, in openly making known all our findings to those most concerned."[40]

On the basis of information obtained from the directors of correctional facilities, the 1972 *Chalke Report* concluded that 10.2 per cent of inmates required psychiatric care and treatment. Beyond tabling this estimate, the conclusions and recommendations of this inquiry were not grounded upon an empirical documentation of the physical and mental health assessment of convicted offenders.

In the Foreword to the 1972 *Chalke Report*, the federal Solicitor General stated that he was "profoundly impressed by the recommendations made by this authoritative body" and that he was requesting the Canadian Penitentiary Service "to develop its psychiatric services to assure that facilities are provided for the diagnosis, care, and treatment of acutely and severely ill inmates", and the development of "clinical investigation and evaluation."[41]

In 1973, the Department of the Solicitor General established the *National Health Services Advisory Committee to the Commissioner of Penitentiaries*. The First Report of the *Advisory Committee* submitted 48 recommendations[42] while the Second Report issued in 1976 contained 76 recommendations. The primary emphasis of the two reports focussed on the re-organization of federal correctional health services. The *Advisory Committee* reiterated the concern that "high priority should be given to the prompt development of regional medical and health care services reception centres,"[43] that these units "should produce a comprehensive multidisciplinary medical report"[44] of inmates, and that "chart audits should take place regularly, either by a peer review committee or by a national consultant, as a method of evaluating and improving the quality of care."[45]

In 1974, the Commissioner of the Canadian Penitentiary Service appointed a special Work Group chaired by a Regional Director of the federal correctional services. Its mandate was "to investigate and report upon the feasibility of establishing in Canada a pilot project for the treatment and reintegration of sexual offenders into society."[46] The 1975 Report of the *Trono Committee* summarized what had occurred in relation to the recommendations of previous inquiries concerning the provision of treatment services for convicted sexual offenders.

> "As long ago as 1958, a Royal Commission advocated that 'an organized scientific study' be undertaken to develop 'improved methods of treatment for (sexual offenders) committed to prisons . . . '. Nothing of any significance in this area was accomplished until 1973 when the Regional Psychiatric Center in Abbotsford, British Columbia, instituted a treatment program for sexual offenders. It is well understood and documented, however, that that program though expensive and well intentioned is hampered by the limiting prison environment. A second program has been operating at the Regional Psychiatric Center (Ontario) since January 1974 utilizing pschotherapy and behaviour modification techniques, but it, too, is subject to the same environmental limitations as the program in Abbotsford.
>
> What is urgently required is a separate and unique non-prison environment where new treatment concepts, already proven, may be applied in the context of a demonstration project to be subsequently evaluated, possibly modified, developed and replicated. A survey of ten institutions — two maximum, three medium, three minimum and two correctional camps — carried out by Dr. G. Scott in the Ontario Region in August, 1974 revealed that the Directors and senior staff of the medium and maximum institutions were in total agreement that a separate accommodation be established.
>
> The need for the program was considered urgent in 1958. Today, that need is alarming. The number of sexual offenders incarcerated in federal institutions in Canada grew from 495 in January 1974 to 656 by May 30th, 1975 — an increase of 32.3% over 17 months."[47]

In 1974, the Executive Secretary of the *Trono Committee* had undertaken what appears to have been the first complete listing and description of convicted sexual offenders in federal custody.[48] The *Trono Committee* drew upon and up-dated the findings of the research report and recommended that:

1. There be a separate Center established for the treatment and rehabilitation of sexual offenders.

2. The treatment administered in this Center be based on the theory and practice followed in the Fort Steilacoom program.[49]

If the 1975 *Trono Committee*'s second recommendation had been acted upon concerning the modelling of the treatment program along the lines of the Fort Steilacoom program established in the State of Washington, it could have entailed the release of convicted offenders prior to their parole who were deemed to have been successfully cured or rehabilitated. Since in Canada there is no legislative authority permitting the discharge of prisoners having determinate sentences and who may have been successfully treated prior to their being paroled or released, the *Trono Committee*'s second recommendation was set aside. The Committee's Report, however, with the second recommendation having been deleted, was up-dated in 1977.[50] In 1980, two new initiatives were undertaken at the federal level. The first involved a brief listing of treatment services provided for sexual offenders who were in federal custody[51] and the second was a survey in which attending correctional professional workers were asked to assess whether they believed that sexual offenders needed treatment.[52] The 1980 *Needs Assessment Survey* also obtained information from 557 sexual offenders about whether they had received treatment.

Although the 1980 survey of existing treatment services provided few details about the nature of the services provided, it concluded that:

> It can be generally observed that all regions provide sex offenders with access to treatment facilities. In the province of Quebec where no federal institution provides specific treatment facilities, sex offenders who request treatment are referred to the provincially operated Institute Phillipe Pinel. In recent years, two new psychiatric hospitals in Abbotsford and Saskatoon have been opened to provide specific services to sexual offenders requiring and requesting treatment.[53]

The 1980 *Needs Assessment Survey* found that attending professional staff reported that seven in 10 convicted sexual offenders (69.7 per cent) needed some form of treatment. The basis for making this assessment was not specified. In the complementary survey of 557 sexual offenders, about one in four (27.6 per cent) had received some form of treatment.[54]

Assessment of Whether Treatment Needed	Provision of Treatment					
	Provided		Not Provided		Total	
	No.	%	No.	%	No.	%
Treatment needed	124	32.0	264	68.0	388	100.0
No treatment required	30	17.8	139	82.2	169	100.0
TOTAL	154	17.6	403	72.4	557	100.0

Over two-thirds (68.0 per cent) of the sexual offenders who had been assessed by attending staff as requiring treatment had not received such services. For this group, the principal reason cited was that two in five of these offenders (43.4 per cent) had refused to participate in the treatment programs provided. Other reasons accounting for their refusals were that some offenders did not believe that they needed treatment, while others were afraid of the risks involved.

In reviewing the development of treatment services for convicted offenders, what stands out sharply from the historical record is that, although the recommendations of several federal inquiries have been clear and consistent, at the present time, there is only fragmentary and incomplete information available about virtually all aspects of treatment services provided for sexual offenders by federal and provincial correctional services. There is now no publicly available, adequate documentation concerning the following issues.

1. **The total number of sexual offenders who are in custody of federal and provincial correctional services.**
2. **A complete listing of: the types of treatment facilities available; the personnel resources deployed; and their experience and qualifications.**
3. **The utilization of general medical and hospital services by convicted sexual offenders.**
4. **A complete description of the nature of the counselling, behaviour modification, psychotherapy and other forms of treatment provided for sexual offenders.**
5. **A complete documentation of how many sexual offenders have participated in these programs, details concerning the services provided, by whom these services were given, and how offenders were selected to participate in the treatment programs.**
6. **The timing, relative to the length of an offender's sentence, when treatment services were given — upon admission, during the course of imprisonment, near the completion of imprisonment, or when a discharged offender was on parole.**
7. **The specification of the treatment programs provided with respect to different types of sexual offenders (e.g., offenders having had male child victims, rapists, incest offenders).**
8. **Assessments of efficacy involving a comparison of the outcomes of treated and untreated offenders, including an evaluation of the utility of different types of treatment and a monitoring of the short and long-term consequences of having been provided with these services relative to changes in values, behaviour and altered levels of recidivism.**

For the reasons listed, the Committee knows of no Canadian study that has assembled reasonably sufficient documentation for convicted child sexual offenders concerning these issues.

Prior Hospitalization for Mental Illness

In the National Corrections Survey, about one in six (17.7 per cent) convicted male child sexual offenders was reported to have been hospitalized for mental illness at least once prior to his current conviction. While there appear to be no comparable Canadian findings in relation to the reported occurrence of hospitalization for mental illness of child sexual offenders, these findings are strikingly similar to those of two other reports in which the extent of mental illness among sexual offenders was reported. In a 1954 survey of 3112 juvenile sexual offenders who had appeared in juvenile courts over a 10 year period in Toronto, the reported prevalence of serious personality disorders was 20 per cent among young male delinquents in comparison to 11 per cent among young female delinquents.[55] In a second study reported in the mid-1970s, one in five (19 per cent) of 47 offenders who were being treated at the Regional Psychiatric Centre at Abbotsford, British Columbia was considered to have been mentally ill by attending psychiatrists.[56] The report concluded that there is a "necessity for careful assessment of all sex offenders so that the appropriate treatment can be instituted for the individual offender at the earliest possible time."[57]

Table 39.1

Reported History of Hospitalization for Mental Illness Prior to Current Conviction

Sex of Victim of Current Conviction	Proportion of Convicted Male Child Sexual Offenders Previously Hospitalized for Mental Illness					
	Dangerous Offenders (n=62)		Other Offenders (n=633)		Total (n=695)	
	No.	Non-Accum. %	No.	Non-Accum. %	No.	Non-Accum. %
Male victims	7	35.0	25	22.9	32	24.8
Female victims	12	30.8	75	14.8	87	16.0
Multiple victims	1	33.3	3	16.7	4	19.0
TOTAL	20	32.3	103	16.3	123	17.7

National Corrections Survey. The denominators used in calculating the proportions listed are given in Chapter 41, *Dangerous Sexual Offenders*, under the Sex and Age of Victims.

In the National Corrections Survey, the proportions of offenders known to have been previously hospitalized for mental illness in relation to the types of sexual offences committed against children and youths were: 24.8 per cent, homosexual offenders; 16.0 per cent, heterosexual offenders; and 19.0 per cent, offenders having multiple victims. When offenders who were found to be dangerous on sentencing are considered separately from other convicted male child

sexual offenders, one in three of the former (32.3 per cent) and one in six (16.3 per cent) of the latter were known to have had a history of prior hospitalization for mental illness. The reasons listed for these prior hospitalizations included: alcoholism and/or drug addiction (12.2 per cent); deviant sexual behaviour (17.0 per cent); various psychoneurotic and personality disorders (56.1 per cent); and not reported (14.7 per cent). Overall, about half (49.5 per cent) of the 123 convicted offenders having been previously hospitalized had had a single admission, one in five (21.3 per cent) had been hospitalized twice, about one in nine (10.7 per cent) three times, and slightly less than one in five (18.5 per cent) four or more times.

The Committee considers that the findings on the reported previous hospitalization for mental illness of persons subsequently convicted of sexual offences against children and youths have significant implications for penal policies concerning the assessment, provision of treatment and the types of facilities provided for these convicted offenders. Despite the absence of comprehensive documentation concerning the known prevalence of mental illness in the Canadian population, in the Committee's judgment, findings of this order are unlikely to occur by chance.

Mental Health Assessment

One in three (33.4 per cent) convicted male child sexual offenders was reported to have been given a mental health assessment. Since the provisions in the *Criminal Code* require that such assessments be made in relation to applications concerning convicted offenders who may be found dangerous by the court, it is not surprising that mental health assessments were reported to have been made for virtually all of these offenders (96.8 per cent). In the case of two offenders for whom this information was not reported, it is evident that the files concerning their assessments had been stored separately from the main correctional dossiers.

Of the remaining 633 convicted male child sexual offenders who were in custody or under supervision of federal and provincial correctional services, about one in four (27.2 per cent) was reported to have received a mental health assessment. The proportions receiving such assessments in relation to the types of offences committed were: 21.1 per cent, homosexual offenders; 28.7 per cent, heterosexual offenders; and 22.2 per cent, offenders having multiple victims. Information was either incomplete or unclear concerning the specialties of the health workers who had provided these assessments. The findings suggest, however, that such assessments had not been made exclusively by psychiatrists; in many instances, it appears that they had been provided by physicians trained in other branches of medicine, mental health specialists who were social workers or nurses, clinical psychologists, and in some instances, by classification officers.

Provision of Mental Health Treatment

It is recalled that in the 1980 *Needs Assessment Survey* of 557 sexual offenders who were in custody of federal correctional institutions, about one in four (27.6 per cent) had received some form of counselling or treatment.[38] The proportion in this category is higher but of the same general order as that documented in the National Corrections Survey. In each of these surveys, the main finding is that most of these offenders were reported not to have received any mental health treatment while they were in custody.

Table 39.2

Provision of Mental Health Treatment for Convicted Male Child Sexual Offenders

Sex of Victim of Current Conviction	Proportion of Offenders Reported to have Received Mental Health Treatment by their Previous Criminal Record							
	Prior Criminal Record of Offenders							
	None (n=262)		Sexual Offences (n=179)		Other Offences (n=254)		Total (n=695)	
	No.	Non-Accum. %	No.	Non-Accum. %	No.	Non-Accum. %	No.	Non-Accum. %
Male victims	5	10.2	19	37.3	3	10.3	27	20.9
Female victims	31	15.0	43	36.8	36	16.2	110	20.2
Multiple victims	2	28.6	2	18.2	1	33.3	5	23.8
TOTAL	38	14.5	64	35.8	40	15.7	142	20.4

National Corrections Survey. See Table 38.1 in Chapter 38, *Convicted Offenders*, for denominators used in calculating the proportions of offenders having received mental health treatment.

In the National Corrections Survey, one in five of the convicted male child sexual offenders (20.4 per cent) was reported to have received some type of mental health treatment. There was no variation in this regard in relation to the types of offences committed. However, there were sharp differences in relation to the offenders' prior criminal records. Among sexual recidivists, over one in three (35.8 per cent) had received some type of mental health treatment, while among non-sexual recidivists and first-time convicted offenders, the proportions respectively were one in six (15.7 per cent) and one in seven (14.5 per cent).

The type of care provided was listed for nine in 10 (90.1 per cent) of the offenders who were known to have received mental health treatment. About

three in five (57.8 per cent) had received some type of counselling and/or psychotherapy (individual or group). The other treatments provided included: training in life skills (11.7 per cent); services provided by Alcoholics Anonymous (11.2 per cent); behaviour modification, aversion therapy and drug therapy (11.7 per cent); and other procedures (7.6 per cent, sterilization, lobotomy, etc.).

Of the 142 offenders reported to have received mental health treatment:

1. Four in five (81.7 per cent) had received these services on only one occasion, while one in five (18.3 per cent) had been treated on two or more occasions.
2. Non-medically trained health workers had provided about a third of these services (32.3 per cent).
3. Two-thirds of the mental health treatment services (66.7 per cent) had been provided to the convicted chiid sexual offenders while they were in custody.

Alcohol and Drugs

In the national surveys of police forces, hospitals and child protection services, alcohol and/or drugs were reported to have been used by suspected or known offenders in connection with about one in six offences (15.7 per cent) committed against boys and one in 10 offences (9.7 per cent) committed against girls. In contrast, **two in five male child sexual offenders (40.0 per cent) were reported to have been using one or other of these substances either before or when the sexual offences for which they were convicted had been committed.**

The reported use of these substances varied both in relation to the types of offences committed and the prior criminal records of the offenders. Approximately one in four offenders (27.9 per cent) who had committed a homosexual offence or who had had multiple victims (28.6 per cent) was reported to have been using alcohol or drugs. The proportion in this category was over two in five (43.3 per cent) in the case of convicted heterosexual offenders. The reported use of these substances also varied in relation to the offenders' previous criminal records, respectively: 29.5 per cent, no previous criminal record; 38.4 per cent, sexual recidivists; and 55.3 per cent, non-sexual recidivists.

These findings are about of the same order as those reported in other Canadian studies of convicted sexual offenders. In the 1974 Canadian Penitentiary Service Survey,[59] 32.9 per cent of the offenders were reported to have used these substances. In the 1977 survey of 150 sexual offenders incarcerated in Ontario, "65% of the pedophiles and 58% of the rapists either identified themselves, or were described by probation officers as problem drinkers or alcoholics."[60]

The sharp differences in the Committee's several national surveys in the reported use of alcohol and drugs by suspected or known offenders suggest that this type of information surfaces differently in different types of situations. It is unlikely, for instance, had the police, physicians or social workers known that these substances had been used by sexual offenders that they would have consistently under-reported this significant information. However, in the case of the higher proportion of convicted offenders that was reported to have used these substances, it is likely that some offenders either had chosen to volunteer this information as a face-saving rationalization to account for their actions, or they may have done so with the intent that statements about their impaired mental state would be considered as a mitigating factor on sentencing. This interpretation is partially supported by the finding that three in five offenders (58.6 per cent) claiming to use alcohol or drugs alleged that their judgment had been impaired by these substances when they had committed sexual offences against young persons.

Case Studies

Drawn from the Committee's review of the case law, the following case studies illustrate the breadth of judicial discretion on sentencing in relation to considering an accused's prospects of benefitting from treatment while either on probation or while serving a custodial sentence. The case studies suggest that judicial attitudes differ considerably with respect to the perceived need of treatment for convicted child sexual offenders and in regard to the potential efficacy of these services.

Case Study 1: R. v. Henein (1980)[51]

The accused, aged 36, pleaded guilty to five counts of gross indecency in which it was alleged that he had fellated five boys, aged 11 to 13. The incidents occurred over an 11 month period. The accused met the boys at a local restaurant, and returned to his apartment with them. Here, he had one of the boys photograph him in bed being fellated by another of the boys. The accused also took photographs of the boys fellating each other. Threats and violence were not used. Investigating police officers found 60 photographs of nude young boys on the accused's premises, as well as notebooks dating back to 1968 which contained the names of young boys, and newspaper clippings concerning sex offence charges involving men and boys. The police also seized large numbers of pornographic books and magazines including examples of child pornography. The accused admitted having been involved in homosexual pedophilic activities for over 10 years.

After his arrest, the accused received psychiatric help in the form of behaviour modification treatment. A psychiatrist testifying at trial indicated that the accused had a fair chance of being rehabilitated because he now felt a sense of remorse and was highly motivated by the court process. The psychiatrist proposed a treatment program to last three years. The trial judge imposed a suspended sentence with three years' probation, contingent upon the accused undergoing the treatment program. The Crown appealed against sentence.

The court allowed the appeal and varied the sentence to six months' imprisonment with three years' probation on the terms imposed by the trial

judge. After canvassing a number of decisions involving pedophilic offenders, the court expressed its disagreement with the idea that a suspended sentence and long probationary period:

> . . . is inevitably right for these cases and that the abhorrence of the public itself must always be disregarded in the interests of the accused, because ultimately, the interests of the accused in his rehabilitation and that of the public coincide . . . Parliament has shown by the sentence it has established for these offences the seriousness with which it views them. Society has, through Parliament, repudiated these acts by criminal sanction and whether society can repudiate immoral acts by means other than criminal sanctions is irrelevant to these offences.

The court also noted that the accused's sense of remorse and his motivation to undergo treatment only manifested themselves after he had been charged. Thus, the court further held that it:

> . . . should not become accepted wisdom that it is only upon being arrested and charged that remorse needs to be shown and the necessary motivation given to seek treatment. In my view, there is an element of deterrence if those who are aware of their problem and know that their conduct is unlawful are made aware that, if they are detected and convicted, they do not automatically escape incarceration for their criminal acts by, upon detection, expressing remorse and seeking treatment.

In imposing sentence, the court emphasized the need of the criminal justice system to protect children. It was also pointed out that the long period of time during which the accused had been involved with homosexual pedophilia and his refusal to accept certain types of treatment (psychoanalysis and drug treatments) were aggravating factors in his case.

Case Study 2: R. v. B. (1981)[62]

The accused, aged 35, indecently assaulted his five year-old daughter on several occasions, engaging her in acts of cunnilingus and fellatio, and maintaining her silence by means of threats. The accused was dull-witted and "had certain personality defects". At trial, the accused was fined $300.00 and placed on probation for three years. On appeal, the court varied the sentence to nine months' imprisonment plus three years' probation. The court stated that it would have been more severe in sentencing but for the accused's low intelligence, personality defects and progress toward rehabilitation since being sentenced.

Case Study 3: R. v. Robertson (1979)[63]

The accused, a 28 year-old male, was a scoutmaster. Robertson took five members of his troup on a camp-out, and on the first night of the expedition, fellated two of the boys in his tent; these acts gave rise to two charges of gross indecency. On the second night, the accused committed sexual acts upon a third scout for which he was charged with indecent assault on a male. The victims ranged from 11 to 13 years of age.

At trial the accused pleaded guilty and was sentenced to eight months' imprisonment and two years' probation. The accused appealed against sentence.

In allowing the appeal, the majority of the court noted that the Crown counsel at trial had not requested a term of imprisonment but rather had recommended a suspended sentence and a period of probation. The accused was aware of his pedophilic tendencies and had undergone psychiatric treatment for one and one half years. The majority held that the accused's public disgrace was a sufficient specific deterrent and adequately expressed society's

revulsion by the crimes committed; a prison term could not increase the effectiveness of the deterrent. The majority were also influenced by the accused's positive pre-sentence and medical reports, which presented the accused's rehabilitation as a distinct possibility, if proper treatment were received. The majority stated that public protection could best be served by the accused's receiving psychiatric help and, accordingly, varied the sentence to time served (10 days) plus two years' probation conditional upon the accused's seeking treatment.

Howland C.J.O., in dissent, stated that a custodial sentence was appropriate in this case as reflection of public abhorrence of the accused's conduct and of the gravity of the offence. Howland C.J.O. also emphasized the accused's breach of a position of trust as an aggravating factor in the case. In the result, the Chief Justice would not have disturbed the sentence imposed by the trial judge.

Case Study 4: R. v. Campbell (1978)[64]

The accused, aged 30, abducted the 13 year-old complainant and her younger brother, after entering their home where the girl and boy had been left together. Shortly after midnight, the complainant and her brother were driven to a secluded place, and the boy was instructed to lie down on the back seat of the car. Thereupon, the accused removed the girl's clothing by force, raped her and forced her to fellate him.

The accused had no prior criminal record. Evidence indicated that he may have been severely alcoholic and mentally disturbed. The trial judge expressed reservations that a sexual offender imprisoned in a federal penitentiary might suffer physical harm there and be even more dangerous upon being released. Accordingly, the trial judge imposed a 23 month sentence to be served in a provincial correctional centre.

On appeal by the Crown, the Court of Appeal increased the sentence to five years, holding that it was not for the judge in sentencing to consider the harm that the offender might suffer in a federal prison; such matters were the concern of the penitentiary services and of Parliament. In varying sentence, the Court sought to:

> . . . express society's detestation of the offence, protect society from such a man, punish him, and deter him and others from committing such offences.

Case Study 5: R. v. Doran[65]

The 28 year-old accused was described as a competent and dedicated school teacher. He was convicted of indecently assaulting two young girls. Prior to committing the offences, the accused had voluntarily begun receiving psychiatric treatment for his pedophilic tendencies. The trial judge imposed a sentence of 12 months' definite and six months' indeterminate on each charge, to be served concurrently. On appeal, the court was presented with evidence not previously available for perusal by the trial judge concerning the accused's good prospects for rehabilitation. The sentence was varied to time served and two years' probation, with the condition that the accused continue his treatment. In varying sentence, the court considered both the punishment already received by the accused in losing his successful teaching position and the need to deter pedophilic behaviour. As Gale C.J.O. stated:

> Deterrence in this case is of small moment because the Court is of the view that the appellant suffers from an illness, as do all

> pedophiles; they are not deterred by punishment to others. If the appellant is allowed out of custody, undertakes the treatment and repeats this sort of offence, then he should expect to be dealt with in a quite different way because it will then be demonstrated that the public welfare would best be served by isolating him from society.

Case Study 6: R. v. Priest (1974)[66]

The accused was convicted of the attempted rape of a two year-old girl. The accused, who apparently was epileptic, alcoholic and illiterate, was baby-sitting the victim when he committed the offence. The accused claimed that, prior to performing the acts for which he was indicted, he had been drinking, had struck his head twice and could remember little of the incident. The accused had very limited intelligence, and was described as a "village idiot" type and as a "quiet drunk".

At trial, a three year sentence was imposed. The Crown appealed against sentence. The Court of Appeal ruled that in spite of the gravity of the offence, which necessitated a substantial prison term as a general deterrent, the accused was considered to be harmless and dull-witted, and had no prior history indicating a predisposition toward violent or sexually assaultive behaviour. It was also felt that the accused was unlikely to derive much benefit from imprisonment. Furthermore, although the victim was young, she had suffered no serious physical or psychological harm as a result of the offence. The court dismissed the Crown's appeal and upheld the sentence.

Case Study 7: R. v. A.B.[67]

The accused was charged with two counts of having sexual intercourse with a female under the age of 14 years and with five counts of indecent assault on a female. The complainants included A.B.'s daughter, E.B., whose custody he had retained after his divorce, and who testified that, at the age of six, her father had made her fellate him, and that he had attempted to have anal intercourse with her about a year later. The child was subjected to acts of anal intercourse from the time she was eight years-old until she was 13. A.B. began having vaginal intercourse with his daughter two months after her first menstrual period. Throughout the course of her childhood, the girl was induced by her father to participate in a variety of other sexual acts. The incidents of sexual abuse became regular occurrences when the child reached nine years of age. E.B. estimated that she had been involved in between 250 and 500 sexual acts with her father over a seven year period.

At A.B.'s trial, E.B. explained her feelings about her father:

> I didn't know really what it was until a couple of years ago and then I didn't like it and didn't want to do it as often and that caused conflict between us.
>
> I loved him and I cared for him.
>
> I was frightened of him because he got mad easy . . . he'd yell and he'd hit me sometimes.
>
> When I was hit, I'd go and run away.

The child also testified that, "My dad told me that I shouldn't be having sex with boys."

The accused also was sexually involved with at least five other teenaged girls, all of whom were friends of his daughter. Evidence adduced at trial

showed that A.B. had used his daughter to "recruit" these girls to be her father's sexual partners. With A.B.'s encouragement, E.B. invited her friends to visit or sleep over, and on these occasions, A.B. would make sexual advances toward them (usually with E.B.'s assistance). These advances led to fondling, kissing, fellatio, attempted vaginal penetration, and in the case of one complainant, full vaginal intercourse on two occasions. During the second of these two incidents, "E. held the hand of a frightened prostrate little girl while B. succeeded in defiling her and achieving an orgasm." The complainants ranged in age from 10 to 13 years at the times of the events alleged in the indictment.

A.B. pleaded not guilty at trial, but was convicted on all counts. In pronouncing sentence, the trial judge first considered psychiatric evidence introduced during the trial, which indicated that A.B. was a heterosexual pedophile who represented:

> ... a poor candidate for treatment and should be viewed as being at risk of getting in further trouble if returned to the community.

The judge added that:

> ... if this Accused Person, now deprived of his daughter bait to ensnare his virginal victims, is returned to the community still driven by his pedophile illness, a terrible tragedy might occur.

After canvassing a number of relevant recent sentencing decisions, the judge noted that the function of the criminal sanction is not only rehabilitative and deterrent, but also denunciatory. The judge went on to cite *R. v. Pruner* (1979)[68] as authority for the principle that "the maximum penalty should be reserved for the worst offence and the worst offenders." He concluded that A.B.'s crimes against his daughter were almost the worst examples of the offence of indecent assault that could be imagined.

The judge sentenced A.B. to life imprisonment on the count of having sexual intercourse with a female under the age of 14 (his daughter), to concurrent sentences of one, one, one, two and four years' imprisonment with respect to the charges of indecent assault on a female, and to a concurrent term of two years' imprisonment in connection with the other charge of having sexual intercourse with a female under age 14. The judge stated:

> ... I am not prepared to countenance [A.B.'s] release into society until there is some reasonable degree of assurance that his illness is, if not cured, at least curbed.

Thus, the judge added to his decision a recommendation that the Parole Board be satisfied by medical evidence that A.B. had become capable of controlling his pedophilia before allowing him to be released on parole.

Case Study 8: Young v. R.[69]

The accused was charged with three counts of buggery and one count of indecent assault on a male. The incidents occurred on three separate days, and involved four boys aged 6, 8, 8 1/2 and 10; the indecent assault charge was laid with respect to the youngest boy. The accused also forced each of the victims to fellate him and to perform various other sexual acts. The boys suffered minor injuries, such as rectal bruising. At trial, the accused pleaded guilty to all counts, and received a four year sentence on one count of buggery, two years and one year, consecutive, for the other buggery counts, and two years, concurrent, on the indecent assault charge.

The prisoner appealed against sentence, arguing that a total of seven years' imprisonment was excessive, and that given his need for treatment, a total prison term of four years with three years' probation would be more appropriate. The Court of Appeal dismissed the appeal, holding that the requirements of specific and general deterrence, and the necessity of promoting the accused's rehabilitation, made the sentence a fitting one. The accused's "cruel homosexual rapes" were crimes that called for a deterrent sentence. The accused's rehabilitation might be advanced if he were transferred to a regional psychiatric facility for a program of treatment which would be completed just before he became eligible for parole.

Case Study 9: R. v. Adamson (1981)[70]

The accused, a 22 year-old male, exposed his genitals to two young girls, as they walked to school. Next, the accused forced a nine year-old boy into his car. He was charged with forcible confinement (which carries a maximum sentence of five years' imprisonment), pleaded guilty, and was sentenced to 15 months' imprisonment. The trial judge stated that the seriousness of the offence was such as to necessitate a custodial sentence, even though the accused had no prior criminal record and presented an excellent prospect for rehabilitation. The accused appealed against sentence.

The court allowed the appeal, taking note of the fact that the accused had sought psychiatric help, that he was likely to benefit from treatment, that he had abstained from alcohol and drugs after being arrested, and that psychiatric reports indicated that he posed no danger to the public. Notice was also taken of the accused's record of steady employment. In the result, the sentence was reduced to nine months' imprisonment to be followed by a two year probationary period.

Case Study 10: R. v. Beaudoin[71]

The accused, aged 37, was a married man and a school teacher. He pleaded guilty to one count of sexual intercourse with a female under age 14 and to two counts of sexual intercourse with a female between the ages of 14 and 16. The offences were carefully planned and involved taking polaroid photographs of the complainants. The court held that in view of his profession, the accused was guilty of a breach of trust. Mitigating factors cited by the judge included the fact that the accused had recognized that he had a problem, had sought marriage therapy, and was a good prospect for rehabilitation. The accused received a sentence of two years less a day for the offence with the youngest girl, and sentences of one year concurrent with respect to the offences against each of the two older girls. The prison terms were to be followed by two years' probation conditional upon the accused's receiving medical treatment, avoiding communication with the victims, and refraining from contact with educational and youth organizations.

Evaluation of Efficacy

Special treatment programs for convicted sexual offenders have been mounted at a number of correctional facilities across Canada.[72-75] On the basis of published accounts, it appears that the main elements of these special treatment programs consist of:

1. Individual and group counselling, and/or psychotherapy.

2. Behaviour modification and therapy.

3. Various procedures involving training in life skills.

Prior to being treated, convicted sexual offenders may be assessed by means of various psychometric tests, including:

- Social Expression Scale.
- Social Sexual Anxiety Inventory.
- Sex Knowledge Questionnaire.
- Buss-Durkee (anger inventory).
- TAIS (Test of Attentional and Interpersonal Styles).
- Social Self-Esteem and Sexual Attitude questionnaires.

In addition, physiological testing may include showing an inmate a series of photographic slides of deviant sexual behaviour while simultaneously measuring the circumference of his penis by means of a plethysmograph. This procedure is used to determine whether the diameter of an inmate's penis varies with different types of sexual depictions.

While counselling and/or psychotherapy may be provided for individual patients, the more common practice is to schedule group sessions in which a number of transactional and role-playing procedures are used. These techniques may include: Hot-Seat; Empty-Chair; Going-Around; Saying Good-bye; Dealing with Authority; Control of Temper; the Viewpoint of the Victim; Meeting Appropriate Sexual Companions; and Normal Approach Skills.[76]

Where behaviour modification approaches are used, the techniques employed may include:

Orgastic re-conditioning (a convicted offender is instructed to think of a fantasy while he is masturbating himself prior to ejaculation).

Aversive therapy (an electric shock applied by the inmate while viewing photographic slides of inappropriate sexual themes).

Covert sensitization (associating a disgusting fantasy with a deviant sexual fantasy).

Satiation (repeating or boring fantasies to death).

Thought stopping (an inmate snaps an elastic band on his wrist whenever he realizes he is drifting into a fantasy concerning inappropriate sexual behaviour).

The special treatment programs for sexual offenders may also provide sessions focussing upon: assertiveness training; relaxation training; and sex education. These programs are intended to improve the skills, knowledge and attitudes of convicted sexual offenders.

Partly on the basis of his previously undertaken extensive research on sexual offences and also in relation to the findings of a study of intensive group

psychotherapy provided for a dozen sexual offenders in custody at the British Columbia Regional Psychiatric Centre at Abbotsford, D.J. West of the University of Cambridge's Department of Criminal Science has noted that:

> "No system has succeeded fully in reconciling the needs of treatment with those of justice and security. Justice demands fixed terms of detention as a punishment for past crimes. Penal authorities are charged with a responsibility to protect the public from criminals for the duration of their sentence. They cannot risk relaxation of security, or permit trial periods of freedom, for offenders whose criminal history suggests that they are potentially dangerous. The medical treatment model, on the other hand, calls for some flexibility in the time spent in custody according to the offender's progress towards emotional reorientation. Even more important, a realistic treatment programme concentrates on readjustment to the community rather than adjustment to artifical institutional life. The most critical phase of treatment starts when the offender begins to face life outside once again. That moment is the testing time for treatment gains made during incarceration. It is also the moment when emotional conflicts are liable to be reawakened and help is most needed and most likely to be effective. In concrete, practical terms, the psychiatric approach calls for release by easy stages while the offender is still under supervision and still an active participant in a treatment programme. Without this essential provision, treatment schemes are not being given a fair chance and should not be blamed if they fail to prevent recidivism."[77]

With respect to conclusions about the efficacy of special treatment programs, several Canadian studies [78-80] have variously claimed that the provision of these services has had "a demonstrable beneficial effect on the re-offence rate of incarcerated sex offenders,"[81] or alternately, they may have been referred to as having been "an established, demonstrably effective treatment program."[82]

The consensus of numerous reviews of the operation of correctional treatment programs for convicted sexual offenders suggests that there is insufficient evidence available either to warrant the conclusion "that nothing works" or the optimism that certain programs have been "demonstrably successful." On the basis of his extensive review of treatment programs provided for child sexual molesters, V.L. Quinsey concluded that:

> "A more serious difficulty with the treatment programs [described above] is that they do not appear to be based upon a detailed analysis of the individual client's problems. There have been few attempts at designing different treatment interventions for different types of child molesters, particularly as the problems extend to actual sexual behaviours with adult partners in the community. The typical strategy employed in the literature is to obtain a group of more or less similar sex offenders, make a treatment intervention designed to suppress child molesting, evaluate what happens (with measures that vary widely in reliability and relevance over studies) and compare the results obtained with a subjective estimate of what would have occurred without therapy. This strategy poses some rather difficult problems in evaluation. In addition, it does not appear to be the most effective strategy on theoretical grounds."[83]

On the basis of their more general review of the efficacy of correctional treatment programs in Canada and abroad, P. Gendreau and R.R. Ross reached a similar conclusion.

"The criminological literature is replete with reports attesting to the view that correctional treatment is a failure... Conflicting views have been expressed... and while the debate still rages, there appears to be a widespread endorsement of the view that in correctional rehabilitation "nothing works."[84]

The task of testing one's views by seeking and critically evaluating new evidence — what we have naively assumed to be the forte of research — seems to have been studiously avoided by both sides in their struggle to upstage their opponents... [85]

The arguments are persuasive, the rhetoric often brilliant, the metaphors appealing, and the objectivity sadly lacking. The antagonists seem to be more intent on winning arguments than on seeking truths."[86]

Stemming from their intensive review of the special treatment program for convicted sexual offenders at the Regional Psychiatric Centre at Abbotsford, British Columbia, D.J. West and his colleagues concluded that:

"There are three main reasons to justify scepticism about the value of the group treatment programme in British Columbia: absence of firm evidence that the attainment of insight into motives for sexual aggression will prevent recurrence, lack of any means for testing behaviour beyond the confines of the institution, and the barriers to frank communication and assessment within a penal setting. These grounds for scepticism would not amount to much if it could be proved by a follow-up study that the programme really achieved the prevention of further crimes after release.[87]

Treating only those with good prospects guarantees impressive results. To prove the effectiveness of treatment, like must be compared with like, treated cases must be compared with others, assessed as equally eligible for inclusion, who did not receive treatment.[88]

In the present state of the art, a treatment effort such as the one described is largely an act of faith. The therapists believe in it, superficial indications suggest that it helps and, though it can be painful at times, the patients want it, but the security of scientific proof of effectiveness is missing. However, in human affairs, especially in matters of social policy, many decisions have to be taken without benefit of rigorous scientific testing. Having observed the work at close quarters, weighed the pros and cons as critically as possible, using common sense and intuition where scientific assessment is not available, we reached a personal conviction that important and relevant changes in attitude were being made by these patients. There were some men in the group whose improvement was so plainly evident to all observers that we should have gladly recommended their release under continued psychiatric supervision had that course been open, despite a lively appreciation — and some practical experience — of the difficulties and responsibilities of making recommendations for parole. But clearly, no effort should be spared, in spite of all the methodological problems, to secure more objective evidence of effectiveness."[89]

These assessments indicate that in the present state of knowledge, no definitive conclusions can be reached concerning the known or potential efficacy of correctional treatment programs for convicted sexual offenders. While, as noted, a number of special treatment programs are now being provided at several correctional institutions across Canada, it is apparent that despite these efforts relatively little attention has been paid to seeking to

ascertain the needs of a majority of these offenders or to provide reasonably full information about the types of services provided for them.

During its meetings with senior federal and provincial correctional administrators across Canada, the Committee was informed of several reasons why these officials believed that limited information was available about these issues. Their reasons included:

1. Reflecting the deeply rooted repugnance for and rejection of sexual offenders by Canadians, it was suggested that these views were reflected in the administration of correctional services, and accordingly, assistance for these offenders was assigned a low priority.

2. It was also held that most of these offenders did not need treatment. They were considered to be criminally deviant and hence deserved to be severely sentenced by the courts and to be the recipients of harsh punishment meted out by other imprisoned inmates.

3. The Committee was informed that statistics were an academic artifact, one that made no practical contribution in relation to assessing the widely different needs of individual offenders, or in providing assistance in the process of reaching critical decisions concerning the types of custody in which these offenders should be incarcerated or the timing and conditions of their parole. Since these decisions had to be made on a case-by-case basis, it was suggested to the Committee that statistics could not replace the need for drawing upon experienced and sound judgment.

   The Committee rejects this latter premise. As documented elsewhere in the Report, where it was found that clearly set standards had not been established and the actions taken with respect to them monitored, then the decisions based upon informal assessments were found in a number of instances to have resulted in gross errors of judgment having been made. In this regard, one senior correctional administrator informed the Committee that maintaining a deliberate but informal policy of benign silence was preferable to unleashing a Pandora's box of public conern. Such assessments, it was feared by this informed observer, would reveal the glaring inadequacies of the treatment and rehabilitative services provided for offenders as well as indicating the absence of firm documentation concerning the follow-up of discharged prisoners who either had received no services or different types of assistance while in custody or under supervision.

   To the extent that these observations are valid, the absence of complete and externally reviewed documentation concerning the operation of correctional services provides a convenient protective shield serving to deflect independent scrutiny and potential criticism concerning decisions reached about the assessment of the needs, the provision of treatment services, and the release and parole conditions set for convicted child sexual offenders. By choosing not to assemble this type of information or to make it openly available, it can be validly claimed that answers to these questions are unknown.

4. The Committee was told by another senior correctional administrator that once convicted sexual offenders were "out of sight", they were "largely forgotten by the public." It was only when these prisoners were placed on parole or released that the public's concerns were aroused by fears that these offenders might commit further sexual offences.

   This senior official also noted that since the legislative leadership provided was typically weak and poorly informed, correctional services operated with a relatively high level of self-autonomy. This fact, coupled with the lack of sufficient documentation about the operation of these services, effectively precluded these rapidly rotating legislators from delving too deeply into the details of the administration of specific correctional programs, or of being in their positions long enough to have the opportunity of identifying and re-aligning program priorities.

   It was further noted that there was often a high turnover of legislators who were assigned responsibility for correctional services. In this regard, there was a lack of continuity in establishing penal policies. Accordingly, in practice, most important penal policies were developed and implemented by senior career correctional officials.

Whether the views expressed by senior correctional officials are valid or invalid, none of these reasons in the Committee's judgment constitutes acceptable justification for the fact that there is now wholly inadequate information available about the important issues being considered.

It is the stated policy of some correctional services to separate medical records from those maintained for administrative purposes. Where this policy is adhered to, the main correctional dossier for each offender would either contain no record of medical care, or it would only be noted in these files that such services had been provided but with no details being listed. On the basis of the survey's findings, it is unclear even where policies concerning the confidentiality of medical information were reported to have been adopted whether they were being fully adhered to in practice. In all jurisdictions participating in the National Corrections Survey (federal or provincial correctional services), it was found that relatively extensive information on clinical assessments and treatments was available for some offenders, but not for others. As a result, it is unknown where such information was not reported whether the offenders involved had not received these services, or whether they had, but the information had been separately recorded in medical charts.

In light of the findings of several other surveys of convicted sexual offenders in Canada, the likelihood is greater where no information was reported in the present survey concerning the provision of mental health assessments and treatments that in fact no such services had been given or received. This conclusion is supported by the findings of the 1980 *Needs Assessment Survey* conducted by Correctional Services Canada in which it was found that only 27.6 per cent of 557 sexual offenders in federal custody had received any form of treatment.[90] Two smaller studies reached somewhat similar conclusions.

In a survey of 150 convicted sexual offenders in federal custody in Ontario undertaken in the late 1970s, it was reported that:

> "More than half of both groups (51% of the pedophiles and 58% of the rapists) are viewed by institutional staff as poorly motivated toward rehabilitation, with only 17% of the pedophiles, and 10% of the rapists, being described as well-motivated. These figures are reflected in the number of sexual offenders who accept treatment for their deviant behaviour. An established, demonstrably effective treatment program ... has been operating in the Region for three years, and yet in that time less than 80 of the over 300 sexual offenders that have been in the system, have volunteered for treatment. Furthermore, many of these did so in order to enhance their parole chances, rather than because they recognized they had a problem that could benefit from treatment."[91]

Comparable observations were made in the study of 205 sexual offenders who were incarcerated in federal institutions in western Canada.

> "According to case management officers, 67% of the sample decidedly required treatment for sexual deviations ... [however] ... less than 65% of the sample would even admit to their offence or claim the capacity to recall it ... 39% outrightly refused to do so ... In addition, most subjects (70%) were not interested in participating in treatment programs in their current penitentiary setting. As expected, fewer would be disinclined to participate in a hospital (57%) or pre-release setting (54%), or if participation would aid in release (51%). Although this variation in treatment resistance may be indicative of questionable motivation, it could also reflect the reality of prison environment and the pressures experienced by identified sexual offenders."[92]

The Committee's findings on convicted child sexual offenders were obtained in relation to persons who were in custody and under supervision of both federal and provincial correctional services. As a result, these offenders were incarcerated in a sizeable number of institutions, many of which did not provide special treatment programs for sexual offenders. In light of these considerations, the Committee's findings that about one in five convicted male child sexual offenders (20.4 per cent) had received some form of mental health treatment are of the same general order, if somewhat lower, than the findings of the three other Canadian studies reporting the provision of these services. The proportions in these surveys were: 27.6 per cent, 1980 *Needs Assessment Survey*; 26.7 per cent, 1977 Ontario Survey; and 30.0 per cent of offenders willing to receive treatment, 1982 Prairie Region Survey.

Summary

Despite the limitations of the Committee's findings, they clearly indicate the need, as recommended by earlier national inquiries, for the careful and comprehensive documentation of the social, physical and mental health needs of these offenders, the nature of the services provided for them, under what conditions these services are provided, and the assessment of the outcomes of treatment. The Committee's conclusions and recommendations with respect to these issues are identical to those of earlier inquiries undertaken during a period spanning well over half a century.

The 1938 *Royal Commission to Investigate the Penal System of Canada* (Archambault Report) concluded "that a prison system that on the whole, returns prisoners to society worse than when received into its custody fails in its function to protect society."[93] The 1938 *Archambault Report* recommended that:

> "Nothing should be omitted which might improve the character of the prisoner. Thorough mental and medical examinations, complemented by a knowledge of his personal history, background, and family history, should be made of every prisoner by an expert psychiatrist and physician. Proper treatment should follow in an effort to remove the causes of his criminal tendencies.[94]

About two decades later, the 1956 *Committee Appointed to Inquire into the Principles and Procedures followed in the Remission Service of the Department of Justice of Canada* (Fauteux Report) noted that "the problem of the sex offender . . . is primarily a medical problem "[95] While the 1956 *Fauteux Report* observed that "medical science is still uncertain as to the kind of treatment that may be effective," it concluded that "it is obvious that effective treatment can only be discovered if such persons are made the subjects of special study."[96]

This theme was strongly reiterated in the Report of the 1958 *Royal Commission on the Criminal Law relating to Criminal Sexual Psychopaths* (McRuer Report). The 1958 Royal Commission stated that:

> "We believe there is great necessity for concentration on ways and means of clinical study and experiment to arrest the development of sexual deviation. The responsibility for this extends far beyond the jurisdiction of the courts, and even of the legislative bodies . . . [97]
>
> In addition to this, an organized scientific study of the cases of all those committed to serve indeterminate sentences should be undertaken, and if possible, extended to all sexual offenders serving sentences in penitentiaries, with a view to developing improved methods of treatment of those committed to prison, whether for an indeterminate or determinate period."[98]

The Committee strongly endorses the recommendations of the 1938 *Archambault Committee*, the 1956 *Fauteux Report* and the 1958 *McRuer Report*. We believe that another half century should not be allowed to elapse before strong and constructive action is taken in order to assemble obtainable information about the needs and treatment of convicted sexual offenders, including those whose victims were children and youths.

It is evident that, for whatever reasons, correctional services have shown little enthusiasm or disposition to act upon the recommendations of a series of government appointed inquiries in relation to the need to obtain comprehensive and adequate documentation concerning the needs of convicted sexual offenders and the treatment services provided for them. It is evident that if this job is to be done, it must be given a strong legislative mandate and authority must be clearly assigned to assure that the requisite full documentation is undertaken and independently reviewed. There can be no doubt that in relation

to child sexual abuse, the lack of adequate, yet obtainable documentation, has meant that there is virtually no reliable information available concerning how children and youths may be better protected from convicted sexual offenders, particularly those who are recidivists.

Accordingly, the Committee recommends that:

The Office of the Commissioner in conjunction with the Department of Justice, the Department of National Health and Welfare, the Department of the Solicitor General and with the co-operation and participation of Provincial and Territorial Correctional Services, undertake a national research study focussing on the needs and treatment of convicted child sexual offenders. This study should include an assessment of the social, physical and mental health needs of these offenders and of all aspects of the treatment provided for them and the various outcomes.

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Chapter 39: Treatment

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Chapter 40

Recidivism

Over a period of several decades, a number of federal inquiries have called attention to the need for comprehensive research on recidivism and for consideration of more effective means of treating and managing recidivists. In this chapter, the reports of these inquiries and the findings of the main Canadian research studies on recidivism are cited. As well, findings from the National Corrections Survey are presented in conjunction with a number of case studies taken from accounts given by persons contacted in the National Population Survey and cases obtained in the review of sentencing decisions.

The findings concerning recidivism are considered in relation to the prior criminal records of offenders and the types of victims of sexual offences for which the offenders were currently sentenced. In the first category, information was obtained concerning convicted male child sexual offenders having no previous convictions and two types of recidivists, respectively, those previously convicted for sexual and non-sexual offences. The findings on recidivism are also considered in relation to whether the young victims of offences for which offenders were currently sentenced were males, females or multiple victims.

Advisory Reports and Previous Research

The concept of recidivism, or the re-occurrence of crime, has been expanded in recent decades from a listing of rates of reconviction to encompass an assessment of the experience of victims and offenders, documentation of crimes previously committed and consideration of whether there has been a progression from minor to more serious offences. As in the instance of the present review, comprehensive documentation of sexual recidivism has been curtailed by the absence of appropriate control groups and a paucity of information concerning the long-term consequences of different sentencing decisions and penal policies concerning the management and treatment of convicted offenders. The information that is usually available focusses upon persons who are known to be failures with relatively little being known about offenders who do not later regress into criminal activities.

In its review of Canadian reports dealing with sexual recidivism, the Committee found that while there was an abundance of conjecture, few studies contained comprehensive and reliable documentation, particularly in relation to those criminals having children and youths as victims. In most of the reports of advisory commissions and research studies, the ages and sexes of victims are not reported. In some studies, only a few of the sexual offences were considered, while others dealt exclusively with offenders who were in custody or under supervision of either federal or provincial correctional services. The situation of the offenders studied in these reports has been variously derived from: charges laid by the police; pre-sentencing reports; sentences imposed by courts; offenders on probation; offenders who are incarcerated; and offenders, either before or after sentencing, who have been referred for clinical assessment. As a result of the different research methods used involving different groups of offenders, there is no consensus in the main Canadian studies concerning the levels and types of sexual recidivism regardless of the ages of the victims of these offences.

- *1938 Royal Commission to Investigate the Penal System of Canada (Archambault Report).* On the basis of its review of the rates of recidivism between 1891 and 1936, the 1938 Royal Commission concluded that "the present system is neither effecting reformation nor affording protection to society against further offences by prisoners when liberated".[1] In a special analysis of 188 recidivists, it was found that over three in four had been convicted for the first time before age 23, one in six was a drug addict and almost nine in 10 had only a primary school education.

  The Report of the Commission recommended that "accurate statistical information" be assembled to permit assessment of "recidivism, the success or failure of probation, ticket-of-leave or parole and other kindred matters".[2]

- *1956 Committee to Inquire into the Principles and Procedures Followed in the Remission Service (Fauteux Report).* On the issue of convicted sexual offenders, the 1956 Committee concluded that "it is obvious that effective treatment can only be discovered if such persons are made the subjects of special study. We feel that sex offenders should be removed from the normal prison population and that intensified research on the problem should be carried out".[3]

- *1956-59 Toronto Forensic Clinic Study.* In this study of 132 offenders (54 exhibitionists, 55 pedophiles and 23 homosexuals) referred for psychiatric assessment and treatment, it was noted that "the low recidivism rate of sexual offenders is generally recognized. However, if a study population is selected from prison, previous convictions may go up as high as 50 and 60 per cent[4] . . . exhibitionism has consistently had the highest recidivism rate, followed by homosexual pedophilia with a recidivism rate of from 13 per cent to 28 per cent. Heterosexual offences against children show about half this recidivism rate, varying from 7 per cent to 13 per cent[5] . . . exhibitionists exposing to children are more likely to become repeaters than those who expose to adults".[6]

  In reports subsequently issued relating to this study, the researchers reiterated their conclusions concerning the low level of sexual recidivism. In an article published in 1968, it was noted: "A number of studies report a general recidivist rate for all sex offenders at between 12 and 17 per cent.

This low recidivist rate of sexual offenders, compared with other types of offenders, is now generally recognized. Heterosexual pedophiles who are first offenders show a recidivist rate in a number of studies of between 7 and 13 per cent, which is consistently about one-half the rate one finds for homosexual pedophiles or exhibitionists. Our own studies indicate a rate of between 6 and 8 per cent[7] . . . The recidivist rate for first offenders of this type is low, which indicates a good probation risk".[8]

- *1957 British Study of Sexual Offences.* Of 1985 convicted sexual offenders having children, youths and adults as victims, 17.3 per cent had previous convictions for sexual offences. The report notes that "there is a marked difference between the proportion of sexual recidivists in the heterosexual class (12%) and in the indictable homosexual class (23%). Most of the offences in both these classes were committed against children, but it appears that offenders against boys were relatively more persistent than those against girls".[9] No detailed breakdown of the ages of victims of recidivists was given.

- *1958 Royal Commission on the Criminal Law Relating to Criminal Sexual Psychopaths (McRuer Report).* In this inquiry appointed to review the criminal law relating to criminal sexual psychopaths, statistical information assembled by the R.C.M.P. concerning 3110 convicted sexual offenders was reviewed and an analysis was made of 23 incarcerated "sexual psychopaths". As noted in Chapter 36, *The Research Record,* the findings presented in the Royal Commission's Report do not accord with its conclusion that "recidivism is not prevalent among sexual offenders generally".[10] The Report's statistics indicate that about one in seven offenders (14.1 per cent) had had previous convictions for sexual offences and a comparable proportion had subsequently committed sexual offences. In a footnote, the Report notes that "50 per cent were convicted of other crimes before or after their first conviction for a sexual crime. This tends to show that an unusually high percentage of sexual offenders are recidivists in crime".[11]

- *1961-62 Study of Persons Charged with Sexual Offences Whose Cases Came Before Metropolitan Toronto Courts.* Information was assembled for a year concerning 597 persons charged with sexual offences whose cases came to court.[12] The study proceeded on the assumption that persons charged with having committed sexual offences were 'offenders'; it was on the basis of this unusual assumption that rates of recidivism were calculated. In the instance of indecent assault against a female involving victims age 12 and younger, of 86 persons so charged, 55 were sentenced (64.0 per cent). Based on the inclusion of findings for both convicted and non-convicted males, the sexual recidivism rates calculated for various types of 'offenders' were: rape (5.3 per cent); indecent assault female, under age 13 (20.1 per cent); indecent assault female, 13 — 19 years-old (5.1 per cent); indecent act (24.1 per cent); indecent assault male (35.4 per cent); and gross indecency (9.9 per cent).

- *1965 U.S. Study of Sex Offenders.* In this study by the Institute of Sex Research founded by A.C. Kinsey, the main categories used in the analysis of findings concerning 2244 convicted white male sexual offenders were: heterosexual and homosexual offences; consensus or aggression; age of victims (under 11, 12-15, 16 and older); and incest.

About a third of the victims (34.7 per cent) of offenders were under 16 years-old (70.2 per cent, girls; 29.8 per cent, boys). Two in five offenders (39.2 per cent) having children and minors as victims were sexual recidivists.[13] Excluding victims of incest and homosexual offences for whom findings concerning the use of physical force were not given, the study reported that one in eight recidivists (12.2 per cent) had aggressively assaulted young female victims. On the basis of accounts of the offences reported by offenders, it was concluded that a majority (87.8 per cent) of these sexual acts had involved the consent of young victims.

The rate of recidivism varied in relation to whether heterosexual (33.1 per cent) or homosexual (53.4 per cent) offences had been committed against children and minors. The study's main conclusion with respect to the age of the victim was that "there is a definite correlation between recidivism and the age of the sexual object . . . men whose offences were against children have more per capita convictions than those . . . whose objects were older."[14]

- *1967 Study of Rapists in the Kingston Penitentiary.* Of 30 rapists incarcerated in a federal penitentiary, 41 per cent of their victims had been age 15 or younger and 32 per cent had been between 16 and 20 years-old.[15] About one in five (19 per cent) of this small group of incarcerated offenders had previously been convicted for a sexual offence. No separate analysis was given concerning recidivists having children and youths as victims. Despite the absence of information on the level of recidivism of other types of convicted Canadian offenders, the study concluded that "rapists do not have a high incidence of previous sexual offences, and this is supported by other studies[16] . . . very few of these offenders are considered as good prospects for psychiatric treatment. Because rape is a serious and harmful offence, and because the offenders' psychopathology cannot be easily modified, long periods of removal from normal society are perhaps justifiable."[17]

- *1969 Canadian Committee on Corrections* (Ouimet Report). While the 1969 Committee recommended the repeal of legislation relating to habitual and dangerous sexual offenders, its findings concerning the latter group were limited to a brief commentary about the existing statute and the presentation of statistics on the geographical distribution of provinces where dangerous sexual offenders had been sentenced.[18] The Report strongly recommended that extensive empirical research be undertaken concerning sexual recidivism.

- *1974 National Study of Sexual Offenders Incarcerated in Federal Penitentiaries.* Drawing upon the records of the Canadian Penitentiary Service, this study undertook a detailed analysis of 495 sex offenders having sentences of two years or longer who were incarcerated in federal penitentiaries. Six in seven offenders (85.5 per cent) had previous convictions for sexual and non-sexual offences. In comparing its findings on sexual recidivism with those of earlier studies, the report notes "that although the recidivism rate may not have been high in 1948, or in 1969, 43% of all sexual offenders currently incarcerated have been previously convicted of sexual offences."[19] No findings were given concerning the ages of victims of sexual recidivists.

- *1977 Study of Sexual Offenders Imprisoned in Ontario Penitentiaries.* In this study of 150 male sexual offenders incarcerated in federal penitentiaries in Ontario, the rate of sexual recidivism was 48 per cent for 109

rapists and 61 per cent for 49 pedophiles. The study noted that "clearly both groups were recidivistic, with pedophiles being somewhat more incorrigible than the rapists[20] . . . offences against children (so specified on the F.P.S.) accounted for 29% of the pedophiles' previous offences, and *none* of the rapists' previous convictions."[21] Of the group of 82 recidivists, one in nine (11.0 per cent) had children as victims of offences for which they were currently incarcerated.

- *1979 Study of Incarcerated Sexual Offenders in the Prairie Region.* Of 205 incarcerated sexual offenders, 44.4 per cent had previously been convicted for sexual offences.[22] About a third of the victims (36 per cent) involved in current convictions had been children. The level of recidivism varied with the types of offences committed: rape (36.7 per cent); attempted rape (46.7 per cent); indecent assault female (47.1 per cent); indecent assault male (66.7 per cent); sex with a minor (60.0 per cent); gross indecency (66.7 per cent); incest (50.0 per cent); and buggery (20.0 per cent).

None of the main Canadian reports chose to identify the risks to children and youths represented by sexual recidivists or dealt with the issue of penal policies specifically focussing on the treatment and management of these offenders. As previously noted, although several federal inquiries have recommended that extensive research be undertaken in regard to sexual recidivism, it is evident that in the past these concerns have not been acted upon by justice and correctional services.

Case Studies

The accounts concerning sexual recidivism given by persons contacted in the National Population Survey confirm the general finding that only a small proportion of sexual offences which are committed is actually reported to the police. In addition to these accounts, the sentencing case studies taken from the review of court decisions illustrate the elements of the offences committed, the circumstances in cases of this kind which are considered by courts on sentencing and the variation in the lengths of the sentences imposed.

- *33 year-old cosmetics specialist.* When she was six years-old, she was initially exposed to by a "boy about 13 (who then) told me to put his penis in my mouth, or he would tell my parents that I did something else wrong. I was afraid of boys for a short period, like maybe a month." Ten years later, she told her mother.

  "I wished that sex would have been more open at that time, then I would probably have told my parents and maybe this boy could have been helped. A few years later, he was charged with rape in another case."

- *22 year-old mother.* When she was 12 "an old man made sexual passes at me" and attempted to rape her. He was in his mid-fifties "a retired, former murderer who served 20 years for beating his wife to death with a hammer". Because he was a family friend, "I didn't tell. I feel it could have been prevented, if my mother had been more observant."

- *51 year-old housewife.* At the age 16 when she was a patient in hospital, a medical interne fondled her breasts and stimulated her genitals. "It was never completed because of a struggle and shouting and running. I didn't want to see men for a long time." She told her parents and their family doctor. "No action was taken because they couldn't find him. It was a bitter experience, especially the outcome a few months hence. This person had been on drugs from the hospital. He became a murderer and killed a little child in __."

- *34 year-old mother.* When she was 17, she was raped by a 26 year-old labourer. "I got no support from my parents and to this day I have felt let down. I am afraid of most men and threatening situations. I have had help through therapy several times because I don't like sex now and it has affected my marriage. The man who did it continued to harass me for sometime and the police told me to move out of my building, as he kept following and threatening to 'get even' for charging him. He was jailed, later, not on my rape charge, but for manslaughter. My charges ended up being dropped as I was told by my doctors I couldn't handle the stress involved."

- *30 year-old author.* When she was 15, she was sexually assaulted by her 19 year-old first cousin. The incident was not reported. "He was a relative. We were afraid of a scandal in the family. My father talked to him. I wish he had taken firmer steps 'cause it probably would have stopped him from raping a girl a few months later. Because my father didn't think he had done anything serious to me, he didn't press the point too much. Dad never knew I fought him like a devil and got away. Things might have been different had I panicked."

- *23 year-old secretary.* When she was 16, she was raped by an acquaintance from school and as a result of the assault, she had an abortion. "He was let out of jail in two years. He then almost killed a four year-old boy with unwanted sex."

- *30 year-old domestic worker.* When she was 13, her parents' best friend fondled her crotch and anus. When she was 15, this man, an electrical engineer, attempted to rape her. Thirteen years later, she told her parents. "I found out that he has been doing a lot worse things since I grew up and he tried again while he was married. He exposes himself to little girls. The police know about him. I moved away. It didn't scar me because I could cope, but others might not. Help-lines made available and programs for each province would help."

- *31 year-old bus driver.* When she was eight, she was exposed to several times by her 19 year-old uncle. The police were contacted after he had raped her. Subsequently, he was sentenced and imprisoned. "I always felt I did something wrong. The way the police questioned me and the doctors examined me, I was very afraid for a long time. I had no one to talk to until I met my husband. My parents were ashamed and no help. After he got out of prison, he tried something with a girl friend and she told her mother.

  I should have told when he first started touching and petting me. I didn't know anything then. Parents in the fifties and sixties did not explain anything, even the basics. To this day, my Mother has never talked to me about sex."

- *30 year-old wife*. When she was six, her 15 year-old foster brother attempted to rape her. She told her foster mother who contacted a child welfare agency. "My foster mother hit him a couple of times. The social worker didn't believe that a six year-old knew those kinds of things. She thought I was making it up."

  The assaults were repeated by her foster brother. "People should start checking homes with foster children better and start listening to children from now on."

- *27 year-old mother*. When she was nine "my 'uncle', shortly after my brother's death, took my sister and me on a vacation to a cabin. He said he would sleep in the same bed as us (only one available) and he tried to sexually molest me and my sister. He was a good friend of our parents and had known our family for years. I never realized what he was trying to do." The incident was not reported.

  "I wish that during my childhood I had sex education, that my Mother had dealt with my development as a female and that I was secure enough in that family to believe that they would believe what I said did happen. Though I appreciate the fact that I was not raped, I was scarred psychologically in that I am emotionally inhibited to this date with men. I believe sexual transgressors should be given a stiff penalty. The man who molested me was later charged with incest with his own daughter and apparently has molested many other children.

  I really feel now that my parents could have helped me better. It was never talked about, even to this day. They got very upset with me years later when I wouldn't go to his house and meet his wife."

- *R. v. Head* (1970).[23] In connection with the rape of a six year-old girl, the accused, aged 44, was charged with having sexual intercourse with a female under age 14. The physical injuries suffered by the child were:

  > "a tearing of the vaginal opening to within one quarter inch of the anus. The mucous lining of the vagina was ripped and the muscles and tendons were divided down to the rectal mucosa."

  The accused had a prior record for indecent assault on a young girl; psychiatric testimony indicated that he was likely to recidivate, especially when under the influence of alcohol.

  At trial, the accused was sentenced to life imprisonment. For reasons of public protection, the Court of Appeal dismissed the accused's appeal against sentence.

- *R. v. Walsh* (1979).[24] The accused, a 21 year-old with over 16 previous convictions for non-sexual offences, offered a ride home to a 16 year-old girl. Instead, he drove her to a secluded place. "Notwithstanding her tears and protests, the accused forced her to submit to a variety of sexual acts, some of a humiliating nature, culminating in sexual intercourse." When arrested, the accused was found to be unlawfully at large from a penal institution, after failing to return upon the expiry of a temporary pass; further, he had been using a false automobile registration and driver's licence. At trial, the judge observed that the light sentences previously received by the accused had done little to reform him. Since the court's primary concern with regard to violent crime was public protection, it was deemed necessary to impose a sentence sufficient to deter the

accused and others from committing similar offences. However, since little actual violence had been used and the victim had not suffered physical injuries, a four year sentence was imposed.

- *R. v. Fuller* (1981).[25] The 13 year-old complainant was invited to stay overnight at the accused's home by his common-law wife. The 34 year-old accused attempted to rape the girl, who escaped by locking herself in the bathroom and leaving when the accused fell asleep. The accused had a criminal record dating back to 1964, which included crimes of rape and assault causing bodily harm. The accused was on parole from his rape conviction when the offence occurred. A psychiatrist testifying at the trial stated that the accused suffered from a personality disorder marked by suspiciousness, restlessness and emotional lability, and tended to resort to alcohol as a means of escape. At trial, the judge imposed an eight year sentence.

  On appeal by the accused, the Court of Appeal upheld the sentence. The court held that while the accused had unusual artistic talent which afforded some hope for his rehabilitation, he was a dangerous and violent person who should be incarcerated.

- *R. v. Dawson and Williams* (1980).[26] Of four individuals convicted, two appealed against sentence. The complainant, a 15 year-old girl, met in the early morning with a group of friends and acquaintances including the four accused, the appellant Dawson's common-law wife and the girlfriend of one of the non-appellant accused. After stopping at several places to eat and drink, the group went to Dawson's apartment in the early afternoon. When the other women left to buy food for the Dawsons' baby, the complainant remained behind with the four men.

  When the girl attempted to leave, Williams grabbed her by the arm, forced her into the bathroom and punched her in the mouth when she struggled to escape. In spite of her crying, the girl was forced onto the floor and raped. She was then raped, buggered and forced to fellate the other males in the bathroom. Threats of further physical violence were used to obtain her submission. Subsequently, she was forced to remove the rest of her clothes, and was again raped in the bedroom; in addition, she was forced to masturbate two of the men who proceeded to shake an open beer bottle and then forced it into her rectum and vagina and to punch her in the genital area. When the other two women returned, the victim managed to escape, running naked from the apartment.

  In sentencing Dawson to seven years' imprisonment on a charge of rape, and two years' concurrent on a charge of buggery, the trial judge noted the accused's lengthy criminal record, consisting of 11 prior convictions for non-sexual offences, and the fact that the offences against the 15 year-old victim had been committed in his home. In view of his relatively minor criminal record, Williams received a five year sentence for rape and a two year concurrent sentence for indecent assault on a female. Both accused appealed against sentence.

  Both appeals were dismissed. Dawson's sentence was deemed to be appropriate since:

  > "as a man ten years older than any of the other accused, he should have been able to exercise some control over them or over their actions in his residence [and taking into account] the nature of the offences, the cruel and demeaning manner with which the victim was treated, the lengthy and serious criminal record of Dawson, that he exhibited no remorse, that the

offences took place in his residence and that he was fourteen years older than the complainant . . ."

In dismissing Williams' appeal, the court noted that even though he was young and his criminal record minor, he was the first of the accused to confine the complainant, that he struck her twice and that it was he who indecently assaulted her with a beer bottle. The court further observed that Williams was involved continuously throughout the whole series of attacks.

Previous Criminal Record

A sizeable proportion of convicted male child sexual offenders about whom information was obtained in the National Corrections Survey had previously been in conflict with the law. Regardless of whether these offenders were currently sentenced for homosexual or heterosexual offences, about two in three (62.3 per cent) had prior convictions for sexual and non-sexual offences. In relation to the victims of offences of their current convictions, the rates of recidivism were: 62.2 per cent, female victims; 62.0 per cent, male victims; and 66.7 per cent, multiple victims.

In a number of cases, information was missing or only partially reported concerning previous offences committed by offenders when they were juveniles or adults. In the former instance, the frequent omission of this type of information is attributable to the policies adopted by child welfare and law enforcement services whose purpose is to protect juvenile offenders by means of not recording offences, by reclassifying the acts committed, or by not transferring relevant information to the criminal records of adult offenders. In the instance of recording previous convictions involving adult offenders, it was found that while this type of information may be available in the general occurrence records of the police or in records of sentences imposed by courts, it either had not been transposed in a proportion of cases to correctional files, or in other

Table 40.1

Previous Criminal Record of Convicted Male Child Sexual Offenders

Previous Criminal Record	Male Victims (n=129)	Female Victims (n=545)	Multiple Victims (n=21)
	Per Cent	Per Cent	Per Cent
None (as an adult)	38.0	37.8	33.3
Convictions:			
(i) Juvenile	13.2	13.9	19.0
(ii) Adult	62.0	62.2	66.7

National Population Survey. The sub-categories of juvenile and adult convictions are non-accumulative.

instances, such information had only partially been listed. For these reasons, the information obtained in the National Corrections Survey on recidivism involving previous convictions for sexual and non-sexual offences constitutes an under-estimate of the actual number of cases known to enforcement and correctional services.

Since a proportion of convicted child sexual offenders had prior records involving offences committed both when they were juveniles and adults, the findings reported are non-accumulative. For the two main groups of offenders, those having committed homosexual and heterosexual offences, about one in seven was known to have committed an offence as a juvenile. Among the smaller group of offenders currently convicted of sexual offences having multiple victims, this proportion rose to about one in five.

Of offenders having juvenile records, proportionately more of those who were subsequently convicted of heterosexual offences were younger when they

Table 40.2

Convicted Male Child Sexual Offenders: Age at First Previous Conviction

Age at First Previous Conviction	Male Victims	Female Victims	Multiple Victims
	Per Cent	Per Cent	Per Cent
Juvenile Offences	(n=17)	(n=76)	(n=4)
14 years-old and under	17.6	26.3	25.0
14–15 years	29.4	35.5	25.0
16–17 years	35.3	11.8	50.0
Not reported	17.6	26.3	—
TOTAL	99.9*	99.9*	100.0
Adult Convictions	(n=80)	(n=339)	(n=14)
21 years-old and under	11.0	14.8	—
21–30 years	23.2	33.8	35.7
31–40 years	22.0	23.1	21.4
41–50 years	15.8	9.7	—
51 years-old and older	7.3	4.8	21.4
Not reported	20.7	13.8	21.4
TOTAL	100.0	100.0	99.9*

National Corrections Survey.

* Rounding error

had first come in conflict with the law than those who were later convicted of homosexual offences. A similar distribution characterized the age when offenders were first convicted as adults. On average, when they were first sentenced as an adult, offenders later convicted of heterosexual offences were younger than those later sentenced for homosexual offences.

While about a third (37.7 per cent) of the offenders had no prior criminal record, a large proportion of recidivists had been sentenced several times. About one in five convicted male child sexual offenders (22.9 per cent) had one previous conviction with the proportion in this category varying slightly in relation to the nature of their current convictions (24.1 per cent, heterosexual offences; 21.4 per cent, multiple victims; and 18.4 per cent, homosexual offences).

On average, the recidivists currently convicted of sexual offences against children and youths had 6.7 previous convictions for sexual and non-sexual offences committed when they were adults. While the recidivists having previous convictions for only non-sexual offences had proportionately fewer prior convictions (6.1 per offender) than those who were sexual recidivists (7.5 per offender), the findings indicate that a substantial proportion of both groups had been in conflict with the law on several occasions and that the rates of recidivism tended to be higher for those currently sentenced for homosexual offences than those who had committed heterosexual offences.

Type of Previous Conviction	Convicted Offenders Having Previously Served Custodial Sentences by Type of Victim of Current Conviction							
	Males Victims		Female Victims		Multiple Victims		Total	
	Non-Accumulative Percentages							
	No.	%	No.	%	No.	%	No.	%
Non-sexual offences	5	17.2	50	22.5	1	33.3	56	22.0
Sexual offences	28	54.9	52	44.4	4	36.4	84	46.9
TOTAL	33	41.3	102	30.1	5	35.7	140	32.3

A third (32.3 per cent) of the recidivists having prior convictions for sexual and non-sexual offences had previously been imprisoned on at least one occasion. The proportion of sexual recidivists in this category was double (46.9 per cent) that of the proportion of non-sexual recidivists (22.0 per cent). In the latter category, offenders currently sentenced for offences against females were somewhat more likely to have been previously incarcerated than offenders currently sentenced for homosexual offences. This distribution was reversed in the case of sexual recidivists, of whom 54.9 per cent serving sentences for homosexual offences and 44.4 per cent serving sentences for heterosexual offences had

previously been imprisoned. About a third of the offenders having multiple victims (35.7 per cent), regardless of the nature of their previous offences had served time in prison prior to their present convictions.

One in eight recidivists (12.2 per cent) had previously been placed in protective custody with this having involved more offenders subsequently convicted of homosexual offences (17.2 per cent) or having multiple victims (18.2 per cent) than in the case of offenders who were later sentenced for sexual offences against young female victims (10.5 per cent). One in 25 recidivists (4.0 per cent) had participated or been involved on an earlier occasion in an 'incident' while in prison (sit-downs, riots, hostage-taking, assaults); one in eight (11.9 per cent) had attempted to escape. A fifth of the recidivists (21.1 per cent) were reported to have a history of violent behaviour, (11.5 per cent, offenders later convicted of homosexual offences; 20.0 per cent, multiple victims; and 23.6 per cent, heterosexual offenders).

Lengths and Types of Current Sentences

Information given in Table 40.3 on the lengths and types of sentences imposed lists the most serious offence for which an offender was currently convicted, the accumulative length of the sentences served consecutively, and whether the offender had been imprisoned, placed on probation or given other sentences. Because the 62 dangerous sexual offenders in the survey were given indeterminate sentences, findings for this group are not included in this listing. Offenders convicted of a small assortment of other sexual offences or receiving other types of sentences (e.g., suspended sentences, fines) are listed in the 'other' categories in Table 40.3.

In relation to the sentences imposed, the offenders who were the most severely dealt with by the courts were those convicted of: rape, attempted rape; sexual intercourse with a female under age 14; and buggery. Offences in the middle range, those resulting in proportionately fewer offenders being incarcerated and invoking shorter sentences than in the case of the first group of offenders, included: sexual intercourse with a female age 14 but under age 16; incest; gross indecency; sexual intercourse by a guardian [section 153 (1)(a) — there were no convictions under section 153 (1)(b)]; and indecent assault against a male.

Half of the convicted offenders (49.9 per cent) had committed three types of offences which were the least severely punished on sentencing. In comparison with other sentences, a higher proportion of convictions for indecent assault against a female, section 33 of the *Juvenile Delinquents Act* and indecent act resulted in offenders being placed on probation and given shorter custodial sentences. The findings in Table 40.3 clearly indicate the effects of sentencing in relation to different sexual offences in apportioning convicted offenders having custodial convictions between provincial and territorial prisons (sentences under two years) and federal penitentiaries (sentences over two years).

Table 40.3

Type and Length of Sentences of Convicted Male Child Sexual Offenders

Sexual Offence for which Offender was Currently Convicted	Type and Length of Sentence					
	Custodial Sentence		Probation		Other[1]	
	Number of Offenders	Average Length of Sentence (months)	Number of Offenders	Average Length of Sentence (months)	Number of Offenders	Total
Rape	72	97.7	—	—	—	72
Attempted rape	17	42.6	—	—	—	17
Sexual intercourse, female under 14	35	50.3	9	22.0	3	47
Sexual intercourse, female 14 under 16	10	28.6	3	14.8	—	13
Indecent assault female	138	13.0	101	24.5	4	243
Incest	23	25.7	6	32.0	3	32
Sexual intercourse/ guardianship (s. 153(1)(a))	6	9.5	2	24.0	—	8
Buggery	7	39.9	1	24.0	—	8
Indecent assault male	34	20.7	31	28.1	1	66
Gross indecency	26	16.3	15	28.0	—	41
Indecent act	5	3.3	48	20.8	2	55
J.D.A. s. 33	8	6.0	12	20.3	—	20
Other[1]	—	—	—	—	15	15
TOTAL	381	36.0	228	24.2	28	637

National Corrections Survey. The offences committed by 62 dangerous sexual offenders given indeterminate sentences are excluded from this table.

[1] 'Other' dispositions include: Suspended sentence; fine; and a combination of these and other dispositions. For these reasons, the 'average' length of sentences is not given for this category.

Three in five convicted male child sexual offenders (59.8 per cent) were given custodial sentences, over a third (35.8 per cent) were given probation, and one in 23 (4.4 per cent) received other sentences. Usually in conjunction with other sentences, a small number of offenders were fined in relation to convictions for four types of sexual offences.

The findings indicate that fines are relatively seldom used as a form of punishment against convicted male child sexual offenders. This sanction is typically imposed in conjunction with probation or a suspended sentence; its use appears to be limited to convictions for minor offences committed by first-time offenders. Two in three convicted offenders (66.7 per cent) who were fined had no prior criminal record.

Sexual Offence	Number	Average Fine
Indecent assault female	6	$ 633.33
Gross indecency	2	$ 500.00
Indecent act	8	$ 381.25
J.D.A. s. 33	3	$ 283.33

The six categories of available maximum sentences for the majority of sexual offences for which the offenders were convicted (at the time of sentencing and when the survey was conducted) were: summary conviction having a maximum of six months' imprisonment; imprisonment for 2, 5, 10 and 14 years; and life imprisonment. Table 40.4 lists the maximum penalty for each of the main sexual offences, the average lengths of the sentences imposed against offenders in the survey, and gives the latter as a proportion of the former.

Table 40.4

Maximum Sentences Available and Average Length of Custodial Sentences Imposed Against Convicted Male Child Sexual Offenders

Maximum Sentence Available by Type of Sexual Offence	Average Length of Custodial Sentence Imposed Against Convicted Male Child Sexual Offenders (months)	Proportion of Length of Average Sentences Imposed to Maximum Penalty Available (%)
Life Imprisonment		
• Rape	97.7	—
• Sexual intercourse with female under 14	50.3	—
14 Years		
• Incest	25.7	15.3
• Buggery	39.9	23.8
10 Years		
• Attempted rape	42.6	35.5
• Indecent assault male	20.7	17.3
5 Years		
• Sexual intercourse with female 14 under 16	28.6	47.7
• Indecent assault female	13.0	21.7
• Gross indecency	16.3	27.2
2 Years		
• Sexual intercourse, guardianship	9.5	39.6
• Juvenile Delinquents Act, s. 33	6.0	25.0
6 months (summary conviction)		
• Indecent act	3.3	55.0

National Corrections Survey. Findings for 381 convicted offenders given custodial sentences, excluding: 62 dangerous sexual offenders.

Sharp variation occurs in relation to different sexual offences between the average lengths of the sentences imposed as a proportion of the various maximum sentences available. The use of the proportional measure comparing the average lengths of the sentences imposed to the maximum available terms of imprisonment provides a means of assessing current sentencing practices in relation to different offences. In the case of incest and buggery, both having maximum available sentences of 14 years, the average sentences imposed were respectively 25.7 and 39.9 months. In comparison to the maximum available sentence of 14 years for these indictable crimes, the sentences imposed were proportionately 15.3 per cent for incest (an average sentence of 25.7 months in comparison to a maximum of 168 months, or 14 years) and 23.8 per cent for buggery. The proportional measure combined for the two offences having a maximum of 14 years' imprisonment is 19.5 per cent, namely, the sentences imposed for incest and buggery represented about a fifth of maximum terms available of 14 years' imprisonment.

Setting aside the offences not listing specific years of imprisonment (life imprisonment for rape and sexual intercourse against a female under age 14) when the proportional measure is aggregated for the other sexual offences having specified maximum terms of imprisonment, **there is an inverse correlation between the ranking of the maximum available sentences and the average lengths of the sentences actually imposed against convicted male child sexual offenders.**

Maximum Length of Custodial Sentence Available	Proportion of Average Length of Custodial Sentences Imposed to Maximum Penalty Available
	%
14 years	19.5
10 years	26.4
5 years	32.2
2 years	32.3
6 months	55.0

For sexual offences having higher maximum penalties (e.g., 14 years), on average, the sentences imposed were a fifth (19.5 per cent) of the maximum terms of imprisonment. In contrast, for offences specifying two years' imprisonment, the average lengths of the custodial sentences imposed were a third (32.3 per cent) of the maximum available penalty. This proportion rose to 55.0 per cent in the case of the offence of indecent act carrying a maximum sentence of six months. In relation to the different levels of the maximum available sentences, the findings indicate that offenders convicted of minor offences were dealt with, on average, more severely than those who had been convicted of more serious offences relative to the maximum penalties available. These trends suggest that **where maximum sentences are high, the courts appear to be reluctant to impose long terms of imprisonment. Conversely, where shorter maximum sentences are available, proportionately more offenders were given longer sentences.**

Maximum Length of Custodial Sentence Available	Average Length of Custodial Sentences Imposed		
	Shorter	Intermediate	Longer
Life imprisonment	Sexual intercourse, female under age 14 (50.3 months)	—	Rape (97.7 months)
14 years	Incest (25.7 months)	—	Buggery (39.9 months)
10 years	Indecent assault male (20.7 months)	—	Attempted rape (42.6 months)
5 years	Indecent assault female (13.0 months)	Gross indecency (16.3 months)	Sexual intercourse, female age 14, but under 16 (28.6 months)
2 years	J.D.A., s. 33 (6.0 months)	—	Sexual intercourse, guardian (9.5 months)

Within each of the categories of offences having different sentencing limits, there was sharp variation in the average lengths of the sentences imposed for different types of sexual offences.

In each of the sentencing categories, acts involving completed and attempted vaginal and anal penetration with a penis resulted in longer average sentences imposed than for other types of proscribed sexual behaviour. This relationship is sharp and consistent. However, even for offences proscribing intercourse, having the same maximum available sentences, sharp differences occurred in relation to the average lengths of the sentences imposed. On sentencing, these variations may be accounted for: by differences in the elements of the offences committed (e.g., those which were factually non-consensual, whether violence was involved); by a greater repugnance for some offences than others (e.g., buggery); or by the assumption that some types of offenders may be more amenable than others to treatment (e.g., incest).

Both in relation to maximum sentences available and the lengths of the average sentences imposed, the findings reflect substantially different attitudes towards homosexual and heterosexual offenders having children as victims. In this regard, of the two offences having a maximum penalty of 14 years, the offence of buggery was more severely punished than the offence of incest. Of 32 incest offenders, 71.9 per cent were imprisoned having sentences averaging

25.7 months. In contrast, of the small number of offenders convicted of buggery, 87.5 per cent had been imprisoned and, on average, they had received sentences of 39.9 months.

As indicated in the findings of the National Police Force Survey, (Chapter 25, *Elements of the Offences*), the offences of indecent assault against males and females encompass a broad range of proscribed sexual acts with indecent assault against a male having a longer available sentence (10 years) than that available for indecent assault against a female (five years). Together, these two offences accounted for about half (48.5 per cent) of all convictions. While about the same proportion of both types of offenders had been imprisoned (indecent assault against a female, 56.8 per cent; indecent assault against a male, 51.5 per cent), the average length of sentences of offenders assaulting females was 7.7 months shorter than that of offenders assaulting males. **These findings, like those comparing sentences imposed for incest and buggery, leave no doubt that within the limits of the maximum sentences available, homosexual offenders having children as victims were dealt with more severely on sentencing than were heterosexual offenders.** The average lengths of the custodial sentences imposed against these two categories of sexual offenders contrast sharply with the findings given in Chapter 38, *Convicted Offenders*, which show that proportionately more heterosexual than homosexual offenders had committed more serious sexual acts, had more frequently threatened and physically forced victims, and had physically injured more children whom they had sexually assaulted. On the basis of these findings, there can be no doubt that sentencing practices are profoundly influenced by prevailing public and judicial attitudes, in some instances, apparently more so than by the actual elements of the sexual offences committed. On average, convicted homosexual offenders were generally less dangerous to victims than were convicted heterosexual offenders, yet the former received proportionately longer sentences than the latter in relation to the maximum penalties available.

The findings in Table 40.4 clearly indicate that **there is no self-evident rationale underlying the assignment of penalties to sexual offences proscribing similar types of sexual acts. In the case of sexual intercourse with a female, the maximum sentences which could be imposed (when the study was conducted) ranged from two years (sexual intercourse by a guardian) to life imprisonment (rape). The maximum penalties for other acts involving vaginal penetration with a penis are: life imprisonment (sexual intercourse with a female under age 14); 14 years (incest); and 5 years (sexual intercourse with a female age 14 but under age 16). Contingent upon the charges laid, sexual intercourse committed by a family member, relative or a person in a position of trust to the child may invoke penalties of 2 years, 5 years, 14 years and life imprisonment.**

The actual sentences imposed against offenders who had sexual intercourse with young female victims ranged from 9.5 months (sexual intercourse by a guardian) to life imprisonment (rape and sexual intercourse with a female

under age 14). Between these two categories, the average lengths of the sentences imposed for having sexual intercourse with a young female victim were: 28.6 months, sexual intercourse with a female age 14 but under age 16; and incest, 25.7 months. In the latter instance, as documented in Part V of the Report, *Child Protection Services*, the presumption often made is that incest offenders will benefit from treatment and other forms of ameliorative intervention. Comparable professional discretion does not appear to be as frequently invoked in the case of other offenders having committed similar sexual acts against children and youths.

In the Committee's judgment, these findings in conjunction with other evidence given in the Report leave no doubt that the existing provisions in the *Criminal Code* must be restructured to afford protection for sexually abused children based on a rationale which accounts for the sexual acts committed, the degree of danger involved (coercion, injuries), the child's age, and the type of association between the victim and the offender. The existing system of penalties is both irrational in its structure and in its application.

Sexual Recidivism

The 179 convicted male child sexual recidivists for whom findings are given in Table 40.5 may have had more than one current and previous conviction for sexual offences. In some instances, offenders had lengthy records. In each instance, for example, an offender may have had concurrent or consecutive convictions for rape and indecent assault against a female. Where offenders had more than one current or previous conviction, the most serious offence committed (previous or current) was listed. On the basis of this classification, less than half (46.4 per cent) of the previous convictions for sexual offences of sexual recidivists were identical to their current convictions. Four types of offences — rape and attempted rape, indecent assault against a female, indecent assault against a male and indecent act — accounted for three in four (75.4 per cent) previous convictions. With one exception, that involving three cases of incest, where the level of congruence was relatively high between previous and current convictions, the offences in this category were vaguely phrased in relation to specifying the exact nature of the sexual acts proscribed. The offences for which over half of the previous and current convictions were comparable were: indecent assault against a female (59.3 per cent); indecent assault against a male (51.2 per cent); and indecent act (77.8 per cent).

The findings listed in Table 40.5 can be interpreted from two perspectives in relation to whether a progression occurs from minor to more serious sexual offences having been committed. Minor offences committed in the past, such as convictions under section 33 of the *Juvenile Delinquents Act* or for the offence of indecent act, may be considered relative to the nature of the offenders' subsequent convictions. A second approach entails a review of the previous convictions of offenders who were currently sentenced for serious offences (e.g., rape and attempted rape).

Table 40.5

Previous and Current Convictions for Sexual Offences of Male Child Sexual Recidivists

Current Conviction	Previous Conviction								
	Rape/ Attempted Rape	Indecent Assault Female	Incest	Buggery/ Gross Indecency	Indecent Assault Male	Indecent Act	J.D.A. sec. 33	Other Offences	Total (Current Convictions)
Rape/Attempted Rape	8	11	—	2	2	1	1	2	27
Indecent Assault Female	6	35	1	3	2	7	3	2	59
Incest	—	1	2	—	—	—	1	—	4
Buggery/Gross Indecency	3	2	—	4	1	1	—	1	12
Indecent Assault Male	1	4	—	5	20	1	6	2	39
Indecent Act	—	2	—	—	1	14	—	1	18
J.D.A. sec. 33	1	—	—	1	2	—	—	—	4
Other Offences	2	5	—	—	1	1	1	6	16
TOTAL	21	60	3	15	29	25	12	14	179

National Corrections Survey.

Twelve of the 179 sexual recidivists had previous convictions under section 33 of the *Juvenile Delinquents Act*. None was subsequently convicted exclusively under this statute. The 12 offenders' current convictions were for: rape (1); indecent assault against a female (3); incest (1); indecent assault against a male (6); and making obscene telephone calls (1).

A total of 25 sexual recidivists had previously been convicted for the offence of indecent act. Confirming the findings of the National Police Force Survey where it was found that for some offenders there was an association between committing acts of exposure and committing sexual assaults against children, over two in five (44.0 per cent) recidivists previously convicted of the offence of indecent act were later sentenced for sexually assaulting children and youths. The offences committed by this group included: rape (1); indecent assault against a female (7); gross indecency (1); indecent assault against a male (1); and living on the avails of prostitution (1).

About three in 10 sexual recidivists (29.6 per cent) currently sentenced for rape or attempted rape had previously been convicted for these offences. Two in five (40.7 per cent) had previously been convicted of indecent assault against a female. The previous offences committed by the remainder were: buggery (1); indecent assault against a male (2); gross indecency (1); indecent act (1); section 33 of the *Juvenile Delinquents Act* (1); and other (2) which included: sexual intercourse with a female under age 14; and living on the avails of prostitution.

As noted in the review of the research on sexual recidivism, a number of studies have concluded that few sexual offenders are recidivists and that among those having previous convictions there is no progression from minor to serious offences having been committed. In this regard, for instance, the 1965 U.S. Study of *Sex Offenders* concluded that the hypothesis that a sequence occurred was unsound.

> "In our society there is a belief, so common as to constitute folklore, in the evolutionary sequence of behaviour[27] . . . Our data may be interpreted to prove that sex offenders do not as a rule commit offenses of increasing severity. The hypothesis of evolution from the trivial to the serious is not a sound one. On the other hand, by some strange irony, the men who are the most apt to resort to physical violence are those whose initial offenses would be judged as the least harmful to society — sexual activity with consenting minor and adult females and peeping.[28]

> In summary, it appears that the offenders vs. children with multiple offenses generally repeat their original type of offense, relatively few begin using force, and a substantial minority commit what can be termed as nuisance offenses (including exhibition)."[29]

> "There is a pronounced tendency among most sex-offender groups for the second offense to be of the same type as the first. In cases where more than two offenses have been committed there is a tendency for the use of force or threat to become less common in the third or subsequent offenses."[30]

The Committee's findings do not support the conclusions of those research studies which found that sexual recidivism involving children as vic-

tims was low and that no progression occurs from minor to serious offences having been committed. In the Committee's research, the highest level of congruence between previous and current convictions occurred in relation to vaguely phrased offences amenable to encompassing a wide range of proscribed sexual acts. Although in this instance previous and current offences may have been identical in terms of their classification, there is no surety that similar sexual acts were in fact committed. The apparently high level of correlation in these instances may well be spurious by virtue of subsuming dissimilar sexual acts under a single offence.

The findings of the National Police Force Survey indicate that there was extensive variation in the types of sexual acts committed in relation to the charges laid by the police (Chapter 25, *Elements of the Offences*). Comparable findings were obtained in the National Corrections Survey in relation to the types of sexual acts for which offenders were sentenced and the offences for which they were convicted. An instance of this variation is exemplified by the findings concerning 30 of the 695 convicted male offenders sentenced on the basis of sexual acts involving anal penetration with a penis. In the listing of convictions of all offenders in the survey, only eight, or 26.7 per cent, were convicted of buggery.

The Committee's findings concerning the level of congruence between previous and current convictions and whether there is a progression from minor to serious offences must be interpreted in light of the information obtained concerning this issue. Findings obtained exclusively from charges and convictions may be little better than quick-sand as a basis upon which to ground valid conclusions concerning the nature of the sequence of the offences committed. The information required to undertake a sufficient analysis of this issue includes: documentation for both current and previous offences of the sexual acts actually committed; the ages and circumstances of victims; the types of association between victims and offenders; whether threats and physical force were used; and the nature of the injuries sustained by victims. Despite undertaking a detailed review of the correctional records of convicted male child sexual offenders, the Committee found that information was not available for most offenders concerning the circumstances of many aspects of their previous sexual convictions.

The findings given in Chapter 38, *Convicted Offenders*, concerning sexual recidivists indicate that in relation to their current convictions: two in five (42.5 per cent) had committed acts of completed or attempted vaginal penetration with a penis and three in 10 (30.4 per cent) had committed acts of completed or attempted anal penetration with a penis; slightly less than half (45.9 per cent) had threatened or physically forced victims; and one in nine (10.7 per cent) had physically injured a victim. As noted, incomplete information was available concerning the circumstances of the previous sexual offences committed by these sexual recidivists. The findings clearly disprove, however, the conclusion that sexual recidivists constitute little or no danger to victims. In a substantial proportion of these offences, serious sexual acts were committed involving the use of threats and physical force.

When these findings are considered relative to those concerning the sequence of previous and current convictions (and allowing for the limitations noted in regard to information available about the former), then the findings of the National Corrections Survey suggest that a sequence occurs in the progression from minor to serious sexual offences being committed in which children and youths are victims. A high proportion of offenders previously convicted of minor offences (under section 33, *Juvenile Delinquents Act* and indecent act) was subsequently sentenced for more serious offences, and of those currently convicted of serious offences (rape, attempted rape), most had previously been sentenced for minor sexual offences.

In addition to the offenders having previous convictions for sexual offences, the findings indicate that over a third of the offenders in the National Corrections Survey (36.5 per cent) had previously been sentenced for *non-sexual offences*. Where similar information has previously been obtained, these findings are consistent with those of other research studies on sexual offenders. In these studies, however, non-sexual offences are typically excluded from the review of sexual recidivism on the grounds that they constitute qualitatively different types of sexual activity.

The 1957 British study of *Sexual Offences* reported that non-sexual recidivism "varied in the different classes. It was highest in the heterosexual group and lowest in the non-indictable homosexual group... the vast majority... [of sexual recidivists]... had previous convictions for offences against property and particularly for larceny and breaking and entering... It is, however, surprising to find that of sexual recidivists in the indecent exposure class who had previous convictions for non-sexual offences more than half had at least one conviction for breaking and entering..."[31]

The 1965 U.S. study of *Sex Offenders* also found that property offences had been frequently committed by offenders.

> "Crimes against property represent the bulk of the offenses of the prison group; nearly half of their offenses were of this type; this finding is similar to that of other studies of criminals[32]... The only generalization to be drawn from the figures is that the aggressors are more inclined toward crimes against property than other groups, an inclination in keeping with the philosophy of taking what one wants be it property or sex."[33]

In the National Corrections Survey, the types of previous convictions for non-sexual offences committed by offenders were identified for over nine in 10 recidivists (92.6 per cent). These previous non-sexual offences included: assaults against the person (16.2 per cent); crimes against property (55.9 per cent) and other offences, e.g., breach of parole (27.9 per cent). Of the one in six offenders (16.2 per cent) previously convicted for assault, three in five in this group (57.9 per cent) were currently convicted for having committed heterosexual offences. Offenders currently sentenced for heterosexual offences accounted for 87.4 per cent of those having previous convictions for non-sexual offences.

Break-and-enter offences constituted three in four of the previous convictions (74.2 per cent) for offences involving property. Offences of this kind were committed equally by all types of persons subsequently sentenced for sexual offences against children and youths. While in this regard comparative Canadian information is not available for sexual offenders having adult victims or for those having committed non-sexual assaults against the person, it is unlikely that findings of this order occur by chance. It is evident that the frequency with which break-and-enter offences are committed by convicted male child sexual offenders is characteristic of persons engaging in this type of criminal activity.

The limited evidence available suggests that a proportion of the property offences committed by sexual offenders may have been sexually motivated crimes. D.J. West's indepth analysis of the previous break-and-enter convictions of 12 sexual offenders who were incarcerated in British Columbia found that in almost half of these cases, the motivation had been sexual assault, peeping or the theft of women's clothing.[34]

The Committee's findings presented in Chapter 38, *Convicted Offenders*, clearly show that **non-sexual recidivists sentenced for sexual offences against children and youths were consistently more dangerous than sexual recidivists. In comparison to the latter group, non-sexual recidivists committed more serious sexual acts, they more frequently threatened and coerced victims, and proportionately more of their victims were physically injured. In light of the available evidence, it appears that being criminally experienced, whether previous convictions were for sexual or non-sexual offences, is closely associated with a high level of risk to young victims of sexual offences.**

Summary

1. One third of the offenders (37.7 per cent) had no prior criminal record. Two in three offenders (62.3 per cent) had previous convictions for sexual and non-sexual offences. One in four (25.8 per cent) was a sexual recidivist.
2. Three in five offenders (59.8 per cent) were given custodial sentences, a third (35.8 per cent) were given probation, and one in 23 (4.4 per cent) received other sentences.
3. For offences having higher penalties, the custodial sentences imposed were proportionately shorter relative to the maximum terms available than those imposed relative to offences having shorter maximum terms.
4. Where the maximum terms were similar, offenders committing acts of completed and attempted vaginal and anal penetration were given longer custodial sentences than offenders who had committed other types of sexual acts.
5. The average length of the custodial sentences imposed in relation to similar sexual acts having been committed (e.g., sexual intercourse) varied sharply.

6. Where the maximum terms were similar, homosexual offenders typically received longer custodial sentences than heterosexual offenders.

7. Less than half of the previous convictions for sexual offences of sexual recidivists were identical to their current convictions. A substantial proportion of recidivists had committed serious sexual acts and had threatened and physically coerced victims. The findings suggest that a sequence may occur in a progression from minor to serious offences committed by sexual recidivists.

8. One third of the offenders (36.5 per cent) had previous convictions for non-sexual offences. One in six of these offences had been an assault against the person and over half were crimes involving property.

9. Offenders currently sentenced for heterosexual offences accounted for seven in eight of those having previous convictions for non-sexual offences. Break-and-enter offences constituted three in four of the offences against property.

The Committee's findings on sexual recidivism differ from those of a number of other studies in regard to the extent of the problem, the gravity of the offences committed and the indication that there may be a progression from minor to serious offences having been committed. In the case of the present study, these differences may be accounted for by: the use of different research methods; the inclusion of offenders on probation and under custody of federal and provincial correctional services; and findings having been obtained about a substantial number of offenders having children and youths as victims.

Two in three of the convicted male child sexual offenders had previous convictions for sexual and non-sexual offences. No inferences can be drawn from the findings of the survey concerning the efficacy of the assistance and treatment which may have previously been provided to recidivists. **The findings leave no doubt that a substantial number of the offenders had previously been in conflict with the law, and for this group, it is apparent that the prior imposition of criminal sanctions was ineffective in deterring or preventing them from subsequently committing sexual offences against children.**

In their long-term follow-up study of 184 convicted British sexual offenders convicted of rape, incest and unlawful sexual intercourse against girls under 13 years-old, Soothill and Gibbens found that:[9]

> "The most important feature to emerge from this study is the value of a long-term follow-up and of a carefully calculated measure of periods at risk, for by this procedure there is a clear demonstration that a sizeable proportion of these offenders are reconvicted a long time after the usual follow-up of three to five years. Furthermore, the reconvictions which occur after this considerable lapse of time are often serious sexual and/or violence offences."[10]

> "We could estimate that about half of this sample of sexual offenders against young girls would be reconvicted by the end of a follow-up period of 23 years (many of these will be ordinary property offenders whose sexual offence was quite atypical. About one-quarter of the sample will be re-convicted of a sexual or violence offence (usually a rather serious one)."[11]

These researchers concluded that "few are likely to deny the relevance of the recidivism rates of sexual offenders in considering appropriate penal policy in relation to sexual offences" . . . The present study endorses the point that 'a past career of crime is a decisive factor of recidivism' "[66]. The Committee strongly concurs with these conclusions. **The findings of the National Corrections Survey, although limited in documenting the full dimensions of sexual recidivism, confirm the need for long-term assessment and follow-up of convicted child sexual offenders and the development of penal policies appropriate for their treatment and management.**

Both the findings of the National Corrections Survey and the National Police Force Survey show that considerable professional discretion was exercised respectively in the imposition of sentences and the laying of charges. In the application of the criminal law, it may be argued that having considerable discretionary latitude is essential in order to afford the requisite flexibility in dealing with the special circumstances inherent in the broad range of criminal activities coming to the attention of enforcement authorities. To the extent that such professional discretion is exercised, however, it may function operationally to establish penal policies and to void the intentions of legislators.

In relation to the sentencing of offenders, the findings of the National Corrections Survey document the dimensions of the discretionary decisions taken which, at face value, vary substantially from the available sentencing provisions of the criminal law. Within available maximum sentences, there was consistent and sharp variation in relation to the sentences imposed for different sexual offences. This variation occurred even where similar sexual acts had been committed. In this regard, for instance, the average lengths of the custodial sentences imposed for offenders convicted of sexual intercourse with a female age 14 but under age 16 was 28.6 months. This offence has a maximum penalty of five years' imprisonment. In contrast, offenders convicted of incest, an offence having a maximum term of 14 years, were sentenced, on average, to 25.7 months' imprisonment.

The Committee's findings are comparable to those reached in the 1983 Report on *Sentencing Practices and Trends in Canada* commissioned by the federal Department of Justice. On the basis of its review, this study concluded that:

> "Nonetheless, the differences in sentences that were found can be taken as sufficient evidence that one of two problems exist for policy makers. *First*, if it is assumed that no unwarranted disparity exists in sentencing practices, then the undisputed evidence of sentencing differences for cases convicted of offences under the same section [66] of the *Code* must imply that a considerable range of behaviour is encompassed within each section of the *Code*. Given the magnitude of the differences in sentences—and therefore (under this assumption) offences—for convictions within different sections of the *Code*, it becomes doubtful that the *Code* sections sufficiently discriminate among different criminal acts. This problem is especially problematic given the present structure of the *Code* regarding provisions for sentences [67], a structure that assigns specific sentences to offences as defined in specific sections. If the different sections did not differentiate among different criminal

behaviours in an adequate manner, it would be extremely unlikely that the sentences attached to those same sections would adequately differentiate among those behaviours either.

The implications for Criminal Code Review are obvious. Serious attention must be given either to altering the offence descriptions in the different sections of the *Code* to define more narrow ranges of criminal behaviour, or to altering the structure of those parts of the *Code* that speak to sentencing. An example of the latter approach would be to develop a separate section of the *Code* that deals with the general issues and facts that should be considered in sentencing, issues and facts that would include, but would not necessarily be limited to, the description of the offence as contained in other sections."[40]

The 1983 Report on *Sentencing Practices and Trends in Canada* makes the assumption that the sentences imposed are logically related to the behaviours subsumed in the offences. The Committee's findings leave no doubt that, in relation to sexual offences against children resulting in charges being laid or convictions imposed, this assumption is invalid.

In considering this issue, the Committee believes that the answer is not to develop a separate sentencing section of the *Criminal Code*. In relation to sexual offences committed against children, the Committee believes that, where possible, the provisions in the criminal law should be act-specific in the formulation of the offences, and connect the offences and the sentences in a rational manner. The Committee's recommendations to achieve these purposes are specified in Chapter 3 of the Report.

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Chapter 40: Recidivism

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Chapter 41

Dangerous Sexual Offenders

On the basis used to identify other convicted child sexual offenders, Correctional Service Canada made available to the Committee the records of all convicted persons designated as dangerous offenders who had committed sexual offences. A legal review of the statutory provisions concerning persons who on sentencing are found to be dangerous is given in Chapter 37, *Sentencing*. In this chapter, research information is given concerning the full listing of all persons who on February, 1982 were designated as 'dangerous' child sexual offenders; their situation is compared to that of other convicted male child sexual offenders documented in the National Corrections Survey.

As noted in Chapter 36, the computerized federal correctional records information system was developed in relation to the administration of inmates in custody or persons who are under supervision. This system does not contain information concerning the victims of crime. This information, however, is contained in the detailed dossiers maintained for each convicted offender. When these records were reviewed, it was found that there were 114 offenders serving indefinite sentences, of whom 84 had been convicted of having committed sexual offences. Of the latter group, 62 offenders found to be dangerous had been convicted for sexual offences in which children and youths had been victims.

In light of these findings, it is evident that the statutory provisions pertaining to persons found to be dangerous are used extensively in relation to convicted male child sexual offenders who constituted over half (54.3 per cent) of all offenders in the country serving indefinite sentences. Dangerous sexual offenders constituted three in four (73.7 per cent) of all males serving these sentences, and within this group, three in four (73.8 per cent) had been convicted of sexual crimes against young persons.

In its review of previous legislative and advisory reports[1-3] and research studies, the Committee found that these sources provided a partial basis for purposes of historical comparison. However, despite the high proportion of offenders in these categories having children and youths as victims, none of these studies had specifically considered dangerous offenders who had been convicted of child sexual abuse. Typically, the available reports and studies had dealt with the rationale and justification of the special legal provisions or with

the management, treatment and parole of these offenders. Although in comparison to all convicted offenders the group designated as 'dangerous' is small, the research focussing upon their experience and situation has dealt with only a handful of these cases. The Committee knows of no Canadian study that has documented completely or in detail who dangerous child sexual offenders are, or that has compared them in relation to the elements of the offences committed with other convicted child sexual offenders.

While there is grave public concern about the need for protection for children from dangerous child sexual offenders, there is an information vacuum about the actual utility of these special legal provisions in relation to achieving their intended purpose. While the protection of the public is assured in relation to convicted persons sentenced to indeterminate periods in custody, it is unknown how many other convicted offenders not having this designation may have committed similar offences, may be equally or more dangerous, or may be handled just as effectively by means other than invoking the special provisions pertaining to dangerous offenders.

Sharply contrasting opinions have been voiced concerning the need and utility of the legal provisions pertaining to dangerous sexual offenders. On the one hand, there is a deeply rooted public concern that these offenders must be severely punished and that the protection of children must be assured by keeping these convicted offenders in custody until it can be shown that they are of no further danger to the community. On the basis of this perspective, it is held that these offenders are brutal and sadistic and that they should be even more harshly dealt with than they are at the present time.

In contrast with the advocacy of stern punishment for these offenders, persons espousing a treatment perspective have concluded that while few child sexual offenders suffer from mental illness, a majority have character disorders and would benefit from counselling and training in relation to adapting to life in the community. In relation to those offenders who are deemed to be dangerous, an unresolved dilemma in this regard is the absence of sufficiently firm information permitting the accurate assessment and provision of appropriate treatment for these persons. The observations made by Marcus and Conway resulting from their assessment of dangerous sexual offenders in custody in British Columbia in 1963-64 still appear to be valid.

> "The present state of scientific knowledge regarding the causes and alleviation of sexual psychopathy is so very limited, and the hazard to the community of a wrong or precipitate decision to release such an offender is so great, that it is rarely indeed that treatment personnel or parole authorities can decisively recommend release. They are not insensitive to the position of the dangerous sexual offender, but responsibility to the public, plus sheer lack of knowledge, makes their caution inevitable."[4]

In addition to the retributive and treatment perspectives, another viewpoint maintains that the legal provisions pertaining to dangerous sexual offenders fail to achieve their intended purpose, that they impose unduly harsh punishment, and that they are generally misapplied to persons who are weak and

inadequate and who are likely to pose little danger to the community. From this perspective, it is maintained that the protection of the public would be equally well served by the provision of management and treatment procedures afforded other convicted sexual offenders.

These concerns have been raised by Greenland who concluded on the basis of reviewing 17 dangerous sexual offenders in custody in Ontario penitentiaries in the early 1970s that:

> "Only about three of the 17 had been dangerous in the sense of seriously threatening the life or safety of others. The other men were apparently guilty of grossly offensive and indecent behaviour but were not physically violent. In view of this, the practice of sentencing pedophiles and exhibitionists to years of incarceration can hardly be justified. The injustice is compounded when these inmates are also likely to experience harsh and degrading treatment and — in one case — a brutal death . . . .the public are being cruelly deceived into believing that the law protects them and their children from assault by vicious sexual criminals. Dangerous sexual offender legislation does nothing of the kind. What it does — often in a mockery of justice — is to give the public a false sense of security by incarcerating virtually for life in conditions of appalling degradation, a pathetic group of socially and sexually inadequate individuals."[5]

The Committee is appraised of the complexity of the difficulties involved in reaching an assessment of what types of behaviour may constitute 'dangerousness' and of the even greater uncertainty that is entailed in predicting the likelihood that offenders will or will not be dangerous upon their release to the community. In considering these crucial and profound matters, however, it appears that little attention and effort have been devoted to the documentation either of who these offenders are, the nature of the injuries inflicted on victims, and the assessment of their social circumstances and mental state, or to the elements of what it is that constitutes dangerous behaviour. In the absence of even rudimentary information of this kind, it is not apparent how any adequate assessment can be made of the operation and efficacy of these special statutory provisions, not just in relation to dangerous child sexual offenders but with respect to all types of convicted offenders having this designation.

Case Studies

Preceding the presentation of research findings about all convicted dangerous child sexual offenders who were in custody or under supervision effective February, 1982, four case studies are given which describe the circumstances of the offences committed and which demonstrate the principles of sentencing involved as they were applied by the courts in finding these offenders to be dangerous.

Case Study 1: R. v. Milne[6]

> The accused was charged with five counts of gross indecency and pleaded guilty to each. The complainants were two males aged 16, one aged 14 and one 13 year-old. Milne met the boys on the street or through acquaintances,

and invited them to his home or to a houseboat where he gave them alcohol and showed them pornographic pictures. The accused proceeded on these occasions to fondle the boys' genitals, masturbate them and then engage them in acts of fellatio; the accused also had nude photographs taken of himself and the boys. At no time were the boys forced to participate in these acts. Evidence indicated that the accused held out the promise to the boys that they could earn money through his sale of the nude photographs.

On the application of the Crown, the trial judge declared the accused to be a dangerous sexual offender pursuant to section 688 of the *Code*. The judge took note of the fact that Milne, a homosexual for his entire adult life, had been convicted on three prior occasions of having indecently assaulted male persons; he also had been convicted of seven non-sexual offences. The trial judge further observed that none of the complainants had suffered physical injury as a result of the offences and that Milne "was not a vicious, aggressive or hostile person, but was rather a mild and insecure man."

The trial judge imposed a sentence of indeterminate length. Milne appealed on the grounds that he did not meet the necessary requirements set forth in section 688 for being declared a dangerous sexual offender and that the judge erred in passing an indefinite sentence.

The Court of Appeal, in summarizing medical testimony given at trial, held that, without treatment, Milne was likely to continue committing offences such as those of which he was convicted, but that he might be rehabilitated if he received proper medical care. It was conceded by Milne's counsel that the offender had committed a serious personal injury offence, and that, in his conduct in sexual matters, he had demonstrated a failure to control his sexual impulses. The court held that notwithstanding his prospects for rehabilitation, the offender, by his conduct in sexual matters, had shown a likelihood of causing future injury, pain or other evil to other persons through failure to control his sexual impulses. The court, in reaching this conclusion, relied on a statement made by the Alberta Court of Appeal in *R. v. Dwyer* (1977), 34 C.C.C. (2d) 293 at 300, to the effect that protection of the public must be the primary consideration in dealing with an application under section 688. The court upheld the declaration that Milne was a dangerous sexual offender. In reference to the indeterminate sentence, the court held that the trial judge had properly exercised his discretion in imposing such a sentence. Accordingly, the offender's appeal was dismissed.

Case Study 2: R. v. Langevin[7]

Langevin pleaded guilty to a charge of rape. The complainant was a 12 year-old girl. Langevin had been granted a weekend pass from the Guelph Correctional Centre where he had been serving a sentence of two years less a day. The 25 year-old offender grabbed the complainant as she was walking home, punched her on the forehead, forced her into a car that he had rented and drove her into a field where he made her fellate him and then proceeded to have vaginal and anal intercourse with her. Aside from minor physical injuries, the girl suffered psychological harms which were enumerated as follows by her mother at trial:

> . . . the child who had always been a good sleeper, now found difficulty in sleeping, and when she did she woke up screaming . . . her appetite was not as good and . . . she had lost from 16-20 lbs. over a month . . . she seemed to shower and wash twice a day . . . her marks at school dropped considerably . . . she would not go anywhere after dark unless someone was with

> her . . . she doesn't trust people anymore, especially men, and . . . she draws back even from her own father.

Following Langevin's conviction, the Crown applied to have him declared a dangerous sexual offender under sections 688 (a)(i), 688(a)(iii), and 688(b) of the *Code*.

The Crown called a young woman who testified that the offender had raped her in 1977 when she was 15 years-old. The circumstances of the earlier attack were similar to those of the rape for which Langevin was currently convicted. In both incidents, the victims had been subjected to forced acts of anal and vaginal intercourse. The offender was convicted on a charge of indecent assault on a female in connection with the earlier offence. In addition, the offender's criminal record included several convictions for theft and breaking-and-entering.

In considering the Crown's application, the court held that the offender had committed a serious personal injury offence as defined by section 687(a), and that the similarities between the two attacks established a pattern of repetitive behaviour on his part. The court also found that, in processing from acts of rape to buggery, Langevin had shown a failure to restrain his behaviour. The court then considered psychiatric evidence which indicated that Langevin had an abnormally high interest in pubescent females, and that unless he made "some very dramatic attempt to change, the likelihood of similar occurrences is probably high". On the basis of this testimony and Langevin's past conduct, the court concluded that there existed a likelihood of his "causing death or injury to other persons or inflicting severe psychological damage upon other persons, through failure in the future to restrain his behaviour". Concerning the Crown's submission that the prisoner's conduct fell within the ambit of section 688(a)(iii), the court ruled that the rape was so brutal as to compel it to conclude that Langevin was not likely in the future "to be inhibited by normal standards of behavioural restraint". Finally, with respect to the submissions relating to section 688(b), the court held that Langevin had shown a failure to control his sexual impulses, and that there was a likelihood of the offender causing injury, pain or other evil to other persons through failure in the future to control his sexual impulses.

In considering whether to exercise his discretion to declare Langevin a dangerous offender, the judge noted that Langevin was a threat to others, and that "weighing the interests of the general public against that [sic] of the offender, it would be flying in the face of all common sense" not to declare Langevin a dangerous offender.

Having made the declaration, the court finally turned to the question of duration of sentence. A number of factors inclined the judge to impose a sentence of life imprisonment, namely:

> . . . .the prior sexual offence of the offender, his aggressiveness and low controls, his penchant for alcohol, my findings that he is likely to fail in restraining his behaviour in the future, that he is in the future unlikely to be inhibited by normal standards of behavioural restraint, and that he is unlikely in the future to control his sexual impulses to the harm of others, that he constitutes a threat to the life, safety or physical or mental well-being of others, and . . . testimony that the offender's sexual problem might not be alleviated until he was past 30 or 40 or maybe beyond that . . .

In the result, however, the court imposed an indeterminate sentence, reasoning that Langevin's:

> ... motivation to accept [psychiatric] treatment would be greater once he considers the advantages afforded him by the periodic reviews of his condition provided for in Section 695.1 of the *Code*.

Case Study 3: R. v. Robertson[8]

The accused carried a three year-old girl from her parent's yard to an abandoned house and there sexually molested her. For this act, he was convicted of kidnapping. The accused also was convicted of indecently assaulting an infant male and upon the Crown's application, was declared to be a dangerous sexual offender under section 688 of the *Code*. For the kidnapping, the accused received a 12 year sentence; as a dangerous sexual offender, he was sentenced to an indeterminate period of imprisonment. The accused appealed from the declaration that he was a dangerous sexual offender.

Citing psychiatric evidence adduced at trial, the court dismissed the appeal. The evidence indicated that the accused was a psychopath who would represent a danger to the public if released. The accused had a record of convictions for related offences. As justification for the indeterminate sentence, the court noted that the accused had never responded positively to penal discipline in the past (i.e., that, upon the termination of a fixed sentence, the accused would remain a danger to the public).

Case Study 4: Hall v. The Queen[9]

The accused was charged with the indecent assault of a 17 year-old female. Upon pleading guilty, the accused was convicted and, upon the Crown's application, declared to be a dangerous sexual offender. He received an indeterminate sentence. Evidence at trial indicated that the accused was a severely retarded man, with an intelligence quotient of 53 and the mental age of a nine or 10 year-old. In addition, it was shown that the accused's testosterone level was several times that of a normal male; the combined influence of these factors made the accused unable to control his sexual urges and to prevent himself from attacking women (he had a lengthy history of such attacks).

At trial, psychiatric testimony was given to the effect that treatments with depo provera would render the accused more docile and controllable. The trial judge, however, declined to speculate upon the possible effectiveness of a treatment "which is as yet unauthorized and unavailable in this jurisdiction".

The accused's appeal against sentence was dismissed. McDermid J.A. held that while the trial judge was entitled to consider the possible effects of treatment on a dangerous offender, such consideration was not binding upon his decision. In the present case, the trial judge had given thought to depo provera treatments and, properly, had decided against making the prospect of such treatments a factor in sentencing. McDermid J.A. noted that the accused's case was an unfortunate one and hoped:

> That the authorities will deal with him in some manner other than confining him in a normal penitentiary with normal prisoners who may mistreat him. However, this is a matter over which the Courts have no control. Confined he must be while he is a threat and has such a history of violent attacks on women.

In a separate judgment, Lieberman J.A. agreed that the prisoner must be confined indefinitely but lamented the fact that there appeared to be no correctional facility capable of providing a humane environment for him. Lieberman J.A. called for the establishment of special facilities for mentally retarded offenders.

Geographic Distribution

The 1969 *Canadian Committee on Corrections* (Ouimet Report) listed the locations where both habitual and dangerous sexual offenders had been sentenced.[10] In each instance, there was a sharp regional imbalance between where these offenders had been sentenced and the relative distribution of the Canadian population. The findings from the 1969 *Ouimet Report* for dangerous sexual offenders are listed in Table 41.1. When these are considered in conjunction with the findings of the 1974 Canadian Penitentiary Service Survey of Sexual Offenders and the 1982 National Corrections Survey conducted by the Committee, it is evident that there are sharp and persistent regional disparities in relation to the application of the statutory provisions pertaining to convicted offenders who have been found to be dangerous by Canadian courts.

Table 41.1

Regions Where Accused Were Found to be Dangerous Sexual Offenders

Region of Canada	1968		1973		1982	
	Dangerous Sexual Offenders[1] (n=57)	Distribution of Population[2]	Dangerous Sexual Offenders[3] (n=66)	Distribution of Population[2]	Dangerous Child Sexual Offenders[4] (n=62)	Distribution of Population[2]
	Per Cent	Per Cent	Per Cent	Per Cent	Per Cent	Per Cent
Maritimes	3.5	9.7	6.1	9.5	4.8	9.1
Quebec	7.0	28.6	10.6	27.6	8.0	26.3
Ontario	35.1	35.1	30.3	35.9	32.3	35.4
Prairies	14.0	16.7	7.6	16.3	22.6	17.6
British Columbia, Yukon, N.W.T.	40.4	9.9	45.4	10.7	32.3	11.6
TOTAL	100.0	100.0	100.0	100.0	100.0	100.0

[1] Canada. Department of the Solicitor General. *Report of the Canadian Committee on Corrections*, Ottawa: Queen's Printer, 1969. Full listing of dangerous sexual offenders.

[2] Canada. Statistics Canada. *Estimates of Population for Canada and the Provinces*, June 1, 1983. Ottawa: Supply and Services Canada, 1983.

[3] Searle, C.A., *A Study of Sexual Offenders in Canada and a Proposal for Treatment*, Ottawa: Canadian Penitentiary Service, 1974 (mimeo). Full listing of all dangerous sexual offenders. The listing of cases for the Prairies does not accord with the census listing for Manitoba, Saskatchewan and Alberta.

[4] *National Corrections Survey*. Full listing of all dangerous *child* sexual offenders.

In the 1969 Report of the *Canadian Committee on Corrections*, it was found that while the Maritimes and Quebec comprised approximately two-fifths of the population (38.3 per cent), only about one in 10 persons (10.5 per cent) then designated dangerous sexual offenders had been sentenced by courts located in these provinces. In this regard, the proportional distribution of sentenced offenders and the relative size of the population for Ontario and the Prairies were generally comparable. However, while the population of British Columbia, the Yukon and the Northwest Territories constituted a tenth of the Canadian population (9.9 per cent), two-fifths of the accused (40.4 per cent) found to be dangerous sexual offenders had been sentenced by courts in this region.

With respect to the geographical distribution of the sentencing of habitual offenders, the 1969 *Ouimet Report* noted that "the present habitual offender legislation has been applied very unevenly across Canada . . .".[11] In relation to the 57 persons then in custody who were dangerous sexual offenders, the 1969 *Ouimet Report* noted that the pertinent legislation "appears to have been more uniformly enforced across Canada than the present habitual offender legislation, although it is obvious that substantial disparity exists with respect to its enforcement in different parts of Canada".[12] On the basis of these findings and drawing upon two previously completed reports that had reviewed respectively the situation of less than a third and a half of offenders who had been found to be dangerous, the 1969 *Ouimet Report* recommended that the "dangerous sexual offender legislation be repealed and replaced by dangerous offender legislation".[13]

In the 1974 Survey undertaken by C.A. Searle, 66 of 495 convicted sexual offenders who were then in custody or under supervision of federal correctional services had been designated by the courts as dangerous offenders.[14] In reviewing where the accused had been sentenced, the regional divisions adopted in the administration of the Canadian Penitentiary Service were used. Since these do not match exactly the classification of the geographical distribution of the population for the four western provinces, the Yukon and the Northwest Territories given in Table 41.1, the comparison between the sentences given and the proportional distribution of the population for these parts of the country is partially inaccurate. Allowing for this discrepancy, however, the findings of the 1974 Survey are generally of the same order as those documented in the 1969 *Ouimet Report*.

The Committee's findings concerning where persons were found to be dangerous offenders differ from those of the two earlier studies since information in the more recent study was only obtained in regard to those accused having children and youths as victims. Despite this difference, and in light of the fact that a sizeable majority of all dangerous sexual offenders (73.8 per cent) were convicted of sexual offences against children, it is not surprising that the trends previously documented were still found to be occurring. One in eight (12.8 per cent) dangerous child sexual offenders had been sentenced by courts in the Maritimes and Quebec. In contrast, these five eastern provinces in 1982 constituted over a third of the Canadian population (35.4 per cent).

In the case of both Ontario and the three Prairie provinces, there was a closer matching between the proportional distribution of dangerous child sexual offenders and the relative distribution of the population living in these regions. In contrast, while the population of British Columbia, the Yukon and the Northwest Territories constituted 11.6 per cent of the country's population in 1982, about a third (32.3 per cent) of all dangerous child sexual offenders had been sentenced by courts in this region.

Within these regional groupings, it is evident that there are three jurisdictions which account for the majority of the applications to court in which offenders are found to be dangerous. Four in five dangerous child sexual offenders (79.0 per cent) had been sentenced in Ontario, Alberta and British Columbia. None had been sentenced in Newfoundland, New Brunswick, the Yukon and the Northwest Territories. A total of five offenders had been sentenced in Quebec in contrast to 20 persons who were found to be dangerous in Ontario.

Although two in three of the surveys dealt with all dangerous sexual offenders, and in the case of the 1974 Survey there was not an exact matching in relation to the designation of geographical regions, **the findings of the three surveys completed between 1968 and 1982 clearly document the occurrence of sharp and persistent regional disparities in the application of dangerous offender provisions to persons convicted of sexual offences.** It is evident that these provisions are less often applied in the Maritimes and Quebec, and that consistently, a disproportionate number of persons receive these sentences in British Columbia.

In the National Corrections Survey, information concerning the location of where the offences had been committed was also obtained in relation to whether the offences had involved offenders and victims living in the same households. In almost a quarter (23.7 per cent) of the offences committed by 633 convicted males, the offender and the victim had lived in the same household. In contrast, only three of the offences committed by dangerous offenders (4.8 per cent) had occurred under similar circumstances. When findings concerning both the location where the offence was committed and the type of association between victims and offenders are considered together, it is evident that few dangerous offenders had had a close association with their victims before committing their offences. Unlike the victims of other male offenders, most of whom had known their assailants, the majority of dangerous offenders were strangers.

Sex and Age of Victims

The sex and age distribution of the victims of the 62 dangerous child sexual offenders differs markedly from that of the other 633 convicted male child sexual offenders documented in the National Corrections Survey. About a third of the victims (32.3 per cent) of the former group were males, slightly less

than two-thirds (62.9 per cent) were females and the remainder consisted of three offenders having multiple victims (4.8 per cent). In comparison with the 633 other convicted male child sexual offenders, among the victims of dangerous offenders, there was proportionately almost a doubling of male victims and about a fifth fewer female victims.

Classification of Convicted Child Sexual Offenders	Male Victims		Female Victims		Multiple Victims		Total	
	No.	%	No.	%	No.	%	No.	%
Dangerous sexual offenders	20	32.3	39	62.9	3	4.8	62	100.0
Other convicted child sexual offenders	109	17.2	506	79.9	18	2.8	633	99.9*
TOTAL	129	18.6	545	78.4	21	3.0	695	100.0

*rounding error

In relation to the age distribution of the victims of the two groups of offenders, dangerous offenders in comparison to others had proportionately almost twice as many young female victims and about a third fewer young male victims. The sex and age distribution of the victims of dangerous offenders indicates, as subsequent findings document further, that there were two separate and distinctive sub-groupings of dangerous child sexual offenders. In relation to other male child sexual offenders, there were proportionately more dangerous offenders having committed homosexual offences and, on average, their victims were older. In contrast, there were proportionately fewer dangerous offenders who had committed heterosexual offences but considerably more of their female victims were young girls who were 11 years-old or younger.

Table 41.2

Ages of Victims of Dangerous Child Sexual Offenders and Other Convicted Male Child Sexual Offenders

Ages of Victims	Male Victims		Female Victims		Multiple Victims	
	Dangerous Offenders (n=20)	Other Offenders (n=109)	Dangerous Offenders (n=39)	Other Offenders (n=506)	Dangerous Offenders (n=3)	Other Offenders (n=18)
	%	%	%	%	%	%
Under age 7	5.0	11.9	25.6	12.0	66.7	22.2
7 – 11 years	25.0	35.8	35.9	21.8	33.3	61.1
12 – 13 years	25.0	18.3	15.4	16.7	—	—
14 – 15 years	30.0	13.8	7.7	12.3	—	5.6
16 years and older	—	11.0	10.3	19.2	—	—
Not reported	15.0	9.2	5.1	18.0	—	11.1
TOTAL	100.0	100.0	100.0	100.0	100.0	100.0

National Corrections Survey.

Types of Sexual Acts

On average, dangerous child sexual offenders had committed 1.4 sexual acts against victims. Offenders in this category having male victims had committed the fewest (1.3) followed by those having female victims (1.5) and those having multiple victims (2.0).

Of dangerous offenders having female victims, two in five (38.5 per cent) had committed rape and about one in eight (12.8 per cent) had attempted to commit rape. A quarter of the female victims (25.6 per cent) had had their genital parts touched, about one in six (15.4 per cent) had experienced oral-genital contacts and about one in five (20.5 per cent) had been exposed to by the offender.

Among the 20 male victims of dangerous offenders, one in four (25.0 per cent) had sustained anal penetration by a penis and there was one instance where an act of this kind had been attempted. About a third of the male vic-

Table 41.3

Types of Sexual Acts Committed Against Victims by Dangerous Child Sexual Offenders

Type of Sexual Act	Male Victims (n = 20)	Female Victims (n = 39)	Multiple Victims (n = 3)
	Non-Accum. %	Non-Accum. %	Non-Accum. %
Fondling, touching breasts, buttocks	10.0	7.7	33.3
Fondling, touching genital area	35.0	25.6	33.3
Kissing mouth, other parts of body	5.0	7.7	33.3
Oral — genital	15.0	15.4	33.3
Oral — anal	5.0	—	—
Attempted vaginal penetration with penis	—	12.8	33.3
Vaginal penetration with penis	—	38.5	—
Vaginal penetration with finger and/or object	—	2.6	—
Attempted anal penetration with penis	5.0	—	—
Anal penetration with penis	25.0	5.1	—
Anal penetration with finger and/or object	5.0	—	33.3
Bestiality	—	2.6	—
Exposed genitals	10.0	12.8	—
Exposed nude body	10.0	7.7	—

National Corrections Survey.

tims (35.0 per cent) had had their genitals touched, one in five (20.0 per cent) had been exposed to and about one in six (15.0 per cent) had had an oral-genital contact. Of the offenders having multiple victims, there was one instance of attempted rape and one young victim had experienced anal penetration by a finger.

In Table 41.4, a comparison is given of the more serious types of sexual acts committed against children and youths by dangerous offenders and other convicted male offenders. On average, dangerous offenders had proportionately committed somewhat more serious offences than other offenders but there were both exceptions to this trend, and in some instances, the differences were modest.

Table 41.4

Comparison of Types of Sexual Acts Committed by Dangerous Child Sexual Offenders and Other Convicted Male Child Sexual Offenders

Type of Sexual Act Committed Against the Child	Male Victims		Female Victims	
	Dangerous Offenders (n = 20)	Other Offenders (n = 109)	Dangerous Offenders (n = 39)	Other Offenders (n = 586)
	Per Cent	Per Cent	Per Cent	Per Cent
Oral — genital	15.0	22.9	15.4	8.9
Attempted vaginal penetration with penis	—	—	12.8	9.7
Vaginal penetration with penis	—	—	38.5	35.0
Attempted anal penetration with penis	5.0	4.6	—	1.4
Anal penetration with penis	25.0	14.6	5.1	1.4
Bestiality	—	0.9	2.6	0.6

National Corrections Survey

Two in five dangerous offenders (38.5 per cent) had raped female victims, a proportion that was a tenth higher than that of other male convicted offenders (35.0 per cent) who had committed rape. About one in eight dangerous offenders (12.8 per cent) had attempted to commit rape, whereas this type of act had been committed against about one in 10 victims (9.7 per cent) of other male offenders.

None of the dangerous offenders had attempted anal penetration with a penis against female victims. In contrast, this act had been attempted against seven victims of other offenders. Anal penetration with a penis against female

victims had been committed by two dangerous offenders and seven other male offenders. There was one instance of bestiality (2.6 per cent) involving a female victim of a dangerous offender and three such incidents (0.6 per cent) had been committed against the female victims of other offenders.

Anal penetration with a penis had been committed against five male victims (25.0 per cent) of dangerous offenders and 16 male victims (14.6 per cent) of other convicted offenders. Attempted acts of this kind had involved about one in 20 victims of both types of offenders.

In relation to the gravity of the types of sexual acts committed by dangerous sexual offenders, a substantially higher proportion of female victims than that of male victims had serious sexual acts committed against them. Overall, about six in 10 female victims had sustained a serious offence while acts of comparable gravity had been committed against about three in 10 male victims of dangerous offenders. These findings further support the earlier observation that there are two distinctive sub-groupings of dangerous child sexual offenders, contingent upon whether homosexual or heterosexual offences had been committed. The findings suggest that significantly different considerations were involved in the assessments made concerning the nature of the dangerous behaviour of these two types of offenders. It is evident that an explication of these criteria is warranted and that these different types of offenders may require substantially different types of management and treatment while they are in custody or under supervision.

Use of Threats and Force

On the basis of the criteria used in the other national surveys in relation to the classification of the use of threats and force in sexual offences committed against children, there was virtually no difference in the occurrence of this element of the offences which were committed by dangerous child sexual offenders (40.3 per cent) and those committed by other male convicted sexual offenders (43.2 per cent). There were differences, however, in relation to whether homosexual or heterosexual offences had been committed by the two groups of convicted offenders.

Use of Threats or Force Against Victims	Male Victims		Female Victims	
	Number	Per Cent	Number	Per Cent
Dangerous child sexual offenders	5	25.0	20	51.3
Other convicted male child sexual offenders	39	35.8	227	44.9
TOTAL	44	34.1	247	45.3

The findings indicate that, on average, proportionately fewer dangerous offenders committing homosexual offences had used threats or force than other convicted sexual offenders in this category while the reverse was true in the case of offenders in these two categories who had committed heterosexual offences.

Overall, however, on the basis of findings obtained uniformly for both groups of sexual offenders in relation to the use of threats and force, it is evident that the differences between the two groups along these lines were minimal. While these findings do not concur fully with those of the 1974 Survey of Sexual Offenders in this regard, the results of both surveys indicate that relative to other convicted sexual offenders, dangerous offenders appeared not to have resorted to more violence than was the case in the former group. On this point, the 1974 Survey noted that "offenders designated as D.S.O.'s used less physical force on their victims than other offenders not so labelled and charged and convicted of rape, attempted rape, indecent assault on females and those convicted of incest."[15]

In the case of both surveys, approximately three in five dangerous sexual offenders were reported not to have used threats or physical force against victims.

Physical Injuries

About one in eight (12.4 per cent) of the victims of the 695 convicted male child sexual offenders was reported to have been physically injured by his or her assailant. The proportion in this category is slightly lower (11.7 per cent) in the case of the 633 offenders who were not found to be dangerous. In contrast, about one in five victims (19.4 per cent) of dangerous child sexual offenders was reported to have been physically injured, and as is the case for all convicted offenders, proportionately more female than male victims had been physically injured.

Physical Injuries Sustained by Victims	Male Victims		Female Victims		Multiple Victims		Total	
	No.	%	No.	%	No.	%	No.	%
Dangerous child sexual offenders	2	10.0	9	23.1	1	33.3	12	19.4
Other convicted male child sexual offenders	8	7.3	62	12.3	4	22.2	74	11.7
TOTAL	10	7.8	71	13.0	5	23.8	86	12.4

On average, about one in 25 victims (3.9 per cent) of all convicted offenders had been hospitalized. About one in 29 of the victims (3.5 per cent) of 633 convicted offenders had been hospitalized, a proportion less than half of that (8.1 per cent) involving victims of dangerous offenders. Only one victim of a homosexual offence had required hospitalization while this had happened to about one in eight victims of heterosexual offences (12.8 per cent).

Age of Offenders

In comparison with other convicted offenders, both dangerous offenders and their male victims were, on average, older and this was also the case in relation to dangerous offenders who had committed heterosexual offences. The findings involving a comparison of the two groups of offenders having committed heterosexual offences are rendered somewhat ambiguous by the number of cases for which this information was not obtained. The information available suggests that, as in the case of offenders convicted of homosexual offences, dangerous offenders having female victims, tended to be older than other convicted male offenders. These trends are consistent with those concerning the age when the first juvenile offence and/or adult conviction had occurred, suggesting that proportionately more dangerous offenders had been convicted at an earlier age than was the case for other offenders and that the imposition of the legal provisions pertaining to dangerous offenders had generally been applied in cases involving somewhat older offenders. These findings are compa-

Table 41.5

Age Distribution of Dangerous Child Sexual Offenders and Other Convicted Male Child Sexual Offenders

Age of Convicted Offender	Male Victims		Female Victims	
	Dangerous Offenders (n=20)	Other Offenders (n=169)	Dangerous Offenders (n=39)	Other Offenders (n=586)
	%	%	%	%
Under age 21	—	11.9	5.1	17.2
21 - 30 years	20.0	18.4	35.9	26.7
31 - 40 years	30.0	22.0	30.7	20.4
41 - 50 years	20.0	11.0	15.4	9.8
51 - 60 years	—	7.3	2.6	3.7
61 and older	5.0	4.6	2.6	1.6
Not reported	25.0	24.8	7.7	20.6
TOTAL	100.0	100.0	100.0	100.0

National Corrections Survey.

rable to those documented in the 1974 Survey of Sexual Offenders in which a comparison was made between the age distribution of 66 dangerous sexual offenders and 429 other convicted sexual offenders.[16]

Social Background

In almost every aspect of their social background for which sufficient comparable information was available, dangerous child sexual offenders differed from other convicted male child sexual offenders. The composition and stability of the families in which they had grown up in as children indicate that unlike other offenders, proportionately more had had no siblings and a larger number had experienced broken homes.

In about equal proportions, both groups of offenders — dangerous and others — had lived in families having both natural parents present (for dangerous sexual offenders, 87.1 per cent, natural mother; 88.7 per cent, natural father). However, there was a sharp difference between the two groups in relation to their having had brothers and sisters. About a third of the dangerous offenders did not have sisters (30.6 per cent) and a quarter did not have brothers (25.8 per cent).

In relation to the types of offences for which they were later found to be dangerous, two-thirds of offenders committing heterosexual offences had sisters (66.7 per cent) and brothers (71.8 per cent) and six in 10 offenders who later committed homosexual offences had sisters (60.0 per cent) and brothers (60.0 per cent).

As noted in the findings given concerning the families of all convicted child sexual offenders, little information was consistently available concerning the values, attitudes and affection that these offenders may have known as children. However, in sharp contrast with the 633 convicted child sexual offenders (11.0 per cent), almost a third of dangerous child sexual offenders had experienced broken homes, been removed by child protection agencies from their homes, or had otherwise been separated at some point from one or both parents.

When the offences were committed, about an equal proportion in both groups having female victims had been married. There was a sharp contrast, however, between the two groups with respect to the marital status of offenders having male victims. Four in five dangerous offenders (80.0 per cent) in this category had been single, whereas only slightly over half of other offenders had never married.

With one exception, the employment status of dangerous offenders was comparable to that of other offenders. Overall, less than half (46.8 per cent) had held full-time employment and about an equal number (48.4 per cent) had had part-time or seasonal jobs, or had been unemployed. The exception was

dangerous offenders who had committed homosexual offences. Half of this group (50.0 per cent) had held full-time positions.

Dangerous offenders having male victims, on average, had received more schooling than dangerous offenders who had committed heterosexual offences. Of the former group, six in 10 (60.0 per cent) had had high school training or had enrolled in post-secondary courses, in contrast to the latter group of whom about a half (51.3 per cent) had had only a primary grade school education. This difference in the relative schooling of the two groups broadens sharply in relation to the proportion of the two groups that had attended post-secondary vocational training programs, colleges or universities. A quarter of the offenders (25.0 per cent) who had been found dangerous as a result of committing homosexual offences had attended post-secondary educational institutions in contrast to one in 20 dangerous offenders (5.1 per cent) having comparable training who had committed heterosexual offences.

Despite the limitations of these findings, it is evident that the situation of dangerous offenders prior to sentencing differed in certain important respects from that of other convicted child sexual offenders. Proportionately, more of the former than the latter had grown up in families with fewer siblings and more had come from broken homes. Also, substantially fewer dangerous sexual offenders than other offenders who had committed homosexual offences had married; more of them had held full-time employment and were better educated; proportionately, both they and their victims were, on average, older; and as a group, fewer had committed serious sexual acts against victims.

Dangerous sexual offenders who had committed heterosexual offences, except for the composition and stability of their families in which they had grown up as children, were similar in most other ways in terms of the information available to other convicted offenders having female victims.

Type of Association

Persons designated as dangerous child sexual offenders provide a striking exception to the trend documented in the national surveys concerning the type of association between victims and offenders. A consistent finding in the other research conducted by the Committee was that most victims not only had known who their assailants were, but that many of these persons were family members, relatives or persons responsible for the child's well-being. This general trend was supported in the review of 695 convicted male child sexual offenders. When this group is considered in relation to whether offenders had been found by courts to be dangerous (62) in comparison to those who were not so designated (633), sharply distinctive trends are apparent with respect to the type of association between victims and offenders in the two groups of convicted child sexual offenders.

In the group of 62 dangerous child sexual offenders, four were family members or relatives to victims (6.5 per cent). These persons were: a step-

Table 41.6

Type of Association Between Victims and Dangerous Child Sexual Offenders and Other Convicted Male Child Sexual Offenders

Type of Association	Male Victims		Female Victims		Multiple Victims	
	Dangerous Offenders (n=20)	Other Offenders (n=109)	Dangerous Offenders (n=39)	Other Offenders (n=506)	Dangerous Offenders (n=3)	Other Offenders (n=18)
	%	%	%	%	%	%
Relationship of incest	—	2.7	—	13.0	—	16.7
Other blood relative	—	3.7	5.1	3.8	33.3	11.1
Guardianship position	—	—	2.6	8.9	—	5.5
Other family member	—	3.7	—	5.5	—	5.5
Position of trust	15.0	3.7	—	2.4	—	—
Friends, acquaintances	35.0	18.3	15.4	19.8	66.7	11.1
Other persons	10.0	12.8	—	7.3	—	11.1
Strangers	40.0	30.3	76.9	22.3	—	16.7
Not reported	—	24.8	—	17.0	—	22.2
TOTAL	100.0	100.0	100.0	100.0	100.0	99.9*

National Corrections Survey.

*rounding error

father, two uncles and a cousin. One offender was a guardian to the child and three who had held a position of trust were teachers.

Overall, three in four dangerous child sexual offenders (61.3 per cent) were strangers, a type of association that varied in relation to whether homosexual or heterosexual offences had been committed. Two in five offenders (40.0 per cent) having male victims were strangers. In contrast, over three in four dangerous offenders (76.9 per cent) having female victims were strangers. Of the three dangerous offenders having multiple victims, one was a relative and two were acquaintances.

In comparison to the 633 other convicted male child sexual offenders, of whom one in nine (11.4 per cent) was in a legal relationship of incest to the child, none of the dangerous offenders had this type of association with a victim. Over one in four of the former group (27.8 per cent) was either a family member, relative or guardian to the child, a proportion over four times larger than that for dangerous offenders (6.5 per cent). About one in four other con-

victed offenders (23.5 per cent) was a stranger whereas over three in five dangerous offenders (61.3 per cent) were reported not to have known their victims prior to having committed sexual offences against them.

This disparity between the two groups of offenders was particularly notable in incidents involving heterosexual offences. Only about one in five other convicted male offenders (22.3 per cent) was a stranger to the female victim. In comparison, over three in four dangerous offenders (76.9 per cent) having female victims were strangers. The difference between the two groups of offenders that had committed homosexual offences was less marked; in a majority of these offences in both categories, victims and offenders had previously been acquainted.

Assaults by Groups

Two dangerous sexual offenders, both having committed heterosexual offences, had had one or more accomplices. None of the homosexual offenders was known to have had an accomplice. This proportion (3.2 per cent) is considerably less than in the group of other convicted male child sexual offenders (7.4 per cent) in which accomplices were involved.

Charges Laid

A single charge had been laid against one in 10 dangerous sexual offenders (9.7 per cent). For both dangerous and other convicted child sexual offenders, those who had committed heterosexual offences averaged the fewest charges laid and those having multiple victims had the highest average. There was a sharp proportional increase, however, in the average number of charges laid involving sexual offences against dangerous offenders who had committed homosexual offences in comparison to other convicted offenders having male victims. The specific charges involving sexual offences laid against dangerous child sexual offenders are listed in Table 41.7.

Previous Criminal Record

With one exception, that of a male who had committed a heterosexual offence, all other dangerous child sexual offenders had a previous criminal record, on average, 11.3 convictions. Only eight of those with a prior record (13.1 per cent) had had a single previous conviction. These convictions were for both sexual and other types of offences. The statistically average experience in this regard (which is misleading) differs sharply from that of the 633 other convicted male child sexual offenders. Approximately a third of the latter

Table 41.7
Charges Laid for Sexual Offences against Convicted Dangerous Child Sexual Offenders

Charges Laid Involving Sexual Offences	Male Victims (n=20)		Female Victims (n=39)		Multiple Victims (n=3)	
	Number	Non-Accum. %	Number	Non-Accum. %	Number	Non-Accum. %
Rape	—	—	15	38.5	—	—
Attempt to commit rape	—	—	3	7.7	—	—
Sexual intercourse, female under 14	—	—	5	12.8	—	—
Indecent assault female	—	—	30	76.9	7	233.3
Buggery	13	65.0	—	—	—	—
Indecent assault male	25	125.0	—	—	2	66.7
Gross indecency	13	65.0	4	10.3	—	—
Indecent act	—	—	3	7.7	—	—
Contributing to/J.D.A.	6	30.0	1	2.6	—	—
Kidnapping	—	—	—	—	1	33.3
Possession of fire-arm	1	5.0	—	—	—	—
Break-and-Enter	—	—	2	5.1	—	—
Escape from custody	—	—	1	2.6	—	—
Wounding causing bodily harm	1	5.0	—	—	—	—
Failure to appear on recognizance, revocation of parole	2	10.0	2	5.1	—	—

National Corrections Survey.

group had no previous criminal record and about one in seven had committed an offence as a juvenile. On average, about one in four dangerous offenders (27.4 per cent) was known to have committed a juvenile offence (homosexual offenders, 20.0 per cent; heterosexual offenders 33.3 per cent).

Of the 13 dangerous offenders having a juvenile record who later had committed heterosexual offences, all had been 15 years-old or younger when they had had their first encounter with the law. In contrast to this group, three in five convicted male offenders who had a juvenile record had been age 15 or younger when they had first committed offences as juveniles. None of the three

dangerous offenders having multiple offenders had a juvenile record; the four dangerous offenders having juvenile records who had later committed homosexual offences were somewhat older than their counterpart group of other convicted male offenders.

Previous Criminal Record	Male Victims (n=20)	Female Victims (n=39)	Multiple Victims (n=3)
	Non-Accumulative Percentage		
None	—	2.6	—
One or more convictions:	100.0	97.4	100.0
(i) Juvenile	20.0	33.3	—
(ii) Adult	100.0	97.4	100.0
AVERAGE NUMBER OF PREVIOUS CONVICTIONS	15.5	8.3	20.7

The trend concerning the age when dangerous offenders had initially been convicted is clear and consistent with respect to when their first convictions as adults had occurred. Of offenders found dangerous for having committed heterosexual offences, three in five (60.5 per cent) had been first convicted when they were 20 years-old or younger. In contrast, of other convicted male offenders having previous convictions, about one in 12 (8.4 per cent) had been a similar age when this had happened. The findings reflecting this trend are comparable for offenders who had subsequently committed offences having multiple victims and those who later had committed homosexual offences.

While a significant proportion of both groups of convicted offenders — dangerous and others — had been previously convicted, it would appear at face value that dangerous child sexual offenders were set apart by the sheer volume of the crimes they had previously committed. For instance, the three dangerous offenders having multiple victims had, on average, 20.7 previous convictions. Similarly, dangerous offenders having committed homosexual offences had also had a considerable number of previous convictions averaging 15.5 per offender, and while the rate for those having committed heterosexual offences (8.3 previous convictions per offender) was considerably lower than for the two other groups of dangerous offenders, the volume of the crimes that they had committed was still substantial.

These findings concerning the apparently high level of recidivism among dangerous child sexual offenders are misleading if only the average rates are considered. These average rates are sharply inflated by the inordinately large number of offences committed by about one in five dangerous offenders (21.0 per cent). In a group as small as that constituting dangerous child sexual offenders (a total of 62), the high level of persistent recidivism of a small subgroup of 13 dangerous offenders serves to distort sharply the average rate of

recidivism for the majority of the other offenders. Between them, the sub-group of 13 recidivists had a total of 338 previous convictions, averaging 26 per offender. Eight of this group had been found dangerous as a result of homosexual offences, four for heterosexual offences and one who had had multiple victims. When the experience of these 13 offenders is set apart from that of the other 49 dangerous child sexual offenders, and the recidivism of the latter is compared to that of the 633 'non-dangerous' convicted offenders, then the findings provide the following distribution with respect to previous convictions. (One dangerous offender had no previous criminal record).

Type of Victim	Dangerous Offenders		Other Male Offenders	
	Number	Average of Previous Convictions	Number	Average of Previous Convictions
Male victims	12	4.7	60	4.8
Female victims	34	4.9	300	5.1
Multiple victims	2	5.5	11	10.1
TOTAL	48	4.9	371	5.2

Excluding 14 dangerous offenders: one, no previous conviction; eight, homosexual offences; four, heterosexual offences; and one, multiple victims.

The findings on the recidivism of dangerous child sexual offenders indicate that, with the exception of a small group of highly persistent recidivists, the experience of the majority (48 offenders having previous convictions) was indistinguishable from that of the record of recidivism of other convicted male child sexual offenders who were not designated as dangerous offenders.

In contrast with other convicted child sexual offenders, of whom over half had previously been in custody (56.4 per cent), only three dangerous offenders (4.8 per cent) had not previously served time in prison. Of those who had previously been in custody, about an equal proportion in each group had at least on one occasion been placed in protective custody but in contrast with other convicted male offenders, fewer dangerous offenders had taken part in prison incidents (6.6 per cent).

Summary

1. Of 114 'dangerous' offenders serving indefinite sentences, 84 were dangerous sexual offenders; of this latter group, 62 had been found dangerous (73.8 per cent) on sentencing for sexual offences committed against children and youths.

2. About a third of the victims of the 62 dangerous offenders were males, less than two-thirds were females, and the remainder had had multiple victims. In comparison to the victims of other convicted child sexual

offenders, the female victims of dangerous offenders were, on average, younger while the male victims of these offenders were somewhat older.

3. Of the 62 dangerous offenders, about one in 20 (4.8 per cent) had lived in the same household as the victim.

4. While dangerous child sexual offenders had committed proportionately somewhat more serious sexual offences against victims than had other convicted child sexual offenders, the differences were more a matter of degree than of kind. Proportionately more serious acts were committed against female victims than male victims.

5. On average, dangerous sexual offenders had not threatened or physically coerced victims more than had other convicted child sexual offenders.

6. Whereas about one in eight (11.7 per cent) other convicted offenders had physically injured a victim, this proportion was about one in five (19.4 per cent) in the case of victims of dangerous child sexual offenders.

7. Dangerous child sexual offenders were somewhat older on average than other convicted male child sexual offenders and a substantially larger proportion of the former group was younger when they had first been convicted.

8. In comparison with other convicted male child sexual offenders, proportionately more dangerous offenders had grown up in broken homes, fewer having male victims had ever been married, and in general, their employment status was comparable.

9. One in 15 dangerous offenders was a family member or relative of the victim; three in five were strangers. In contrast, of other convicted male offenders, over one in four was a family member or relative and about an equal proportion was strangers.

10. Two dangerous offenders had had accomplices in comparison to 7.4 per cent of other convicted child sexual offenders.

11. The average number of charges laid against dangerous offenders, with the exception of those having male victims, was comparable to that of other offenders.

12. In sharp contrast to other convicted child sexual offenders of whom about a third had no previous criminal record, 61 of 62 dangerous child sexual offenders had previous convictions. About one in four of the latter group had a juvenile record.

13. Thirteen dangerous child sexual offenders had, on average, 26 previous convictions. One had no previous record. The recidivism rate of 48 dangerous child sexual offenders was identical to that of other convicted male child sexual offenders who had previously been convicted.

When the circumstances of the sexual offences committed by dangerous child sexual offenders are compared to those committed by other convicted male child sexual offenders, it is evident that the main dimensions of the elements of the offences committed by both groups were remarkably similar. The two groups did not differ with respect to the use of threats or physical force

against victims. While there was a trend towards more serious acts having been perpetrated, these differences were relatively small. A sizeable proportion of convicted offenders who were not designated dangerous had committed similar sexual acts against victims. While double the proportion of the victims of dangerous sexual offenders as that of other offenders had been physically injured, four in five victims in the former group were not reported to have been physically harmed. With the exception of one in five dangerous offenders who had long criminal records, the rate of recidivism for four in five dangerous offenders was similar to the record of other convicted child sexual offenders having previous convictions.

The findings of the National Corrections Survey in which information was obtained for all dangerous child sexual offenders (effective February, 1982) suggest that the type of association between convicted offenders and victims may have been a significant factor on sentencing in influencing whether offenders were likely found to be dangerous. Although one in 11 convicted male offenders in the National Corrections Survey was a natural father to the victim, none had been classified a dangerous offender. As a group, fathers — natural, step, foster, adoptive and common-law — constituted 130 of 695 convicted male child sexual offenders (18.7 per cent). Only one, a step-father, had been classified a dangerous offender.

The findings signify that although a father may have intimidated, threatened and coerced his child over a period of time, and may have repeatedly committed acts such as vaginal or anal penetration with a penis, there was virtually no likelihood on sentencing that he would be found dangerous. In contrast, the findings indicate that the commission of similar or less serious sexual offences by strangers was more likely to result in the imposition of the legal provisions pertaining to dangerous offenders.

The statutory provisions authorizing the preventive detention of persons found to be dangerous were noted in Chapter 37, *Sentencing*. Among other considerations, these provisions provide that the Crown must prove beyond reasonable doubt that the behaviour of a convicted offender was repetitive, persistently aggressive, and acts resulting in serious personal injury had been committed. In light of the findings of the National Corrections Survey, **there can be no doubt that the application of these legal provisions pertaining to dangerous offenders, in instances where sexual offences against children and youths had been committed, is not made on a consistent and uniform basis.**

On the basis of its review, the 1969 *Ouimet Report* concluded "that legislation which is susceptible of such uneven application has no place in a rational system of corrections."[17] Despite subsequent amendments to this legislation, during the intervening decade and a half little has changed to alter the operation in practice of these provisions. Sharp regional disparities still persist. The Committee's findings clearly show that many offenders convicted of having committed serious acts are not designated as dangerous offenders; and of those so classified, many appear to have committed offences which are no graver than those perpetrated by other convicted child sexual offenders.

In the Committee's judgment, the options with respect to the continued application of these provisions are clear in relation to persons convicted of being sexual offenders against children and youths. Either these provisions, which are now inequitably applied, should be amended, or new separate legislation should be introduced to provide added protection for children against sexual offences.

Accordingly, the Committee recommends that:

1. **The provisions in Part XXI of the *Criminal Code* relating to dangerous offenders convicted of sexual offences against children and youths be amended to:**

   (i) **specify the major sexual offences in the definition of "serious personal injury offence";**

   (ii) **specify the conduct by which a sexual offender shows his disregard for others, and in particular, for children; and**

   (iii) **indicate clearly that physical or mental harm is not a requirement in the case of child victims of sexual offences.**

2. **In keeping with the above amendments, which focus on specific conduct and offences, any mention of the prediction of future behaviour be deleted from dangerous offender legislation.**

3. **If the above amendments are not enacted, new legislation, separate from the dangerous offender provisions and meeting the proposed requirements, should be enacted to provide added protection for children against sexual offences.**

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Chapter 41: Dangerous Sexual Offenders

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Part VIII

Juvenile Prostitution

Chapter 42

The Law Relating to Juvenile Prostitution

The issue of prostitution in Canada, in particular, juvenile prostitution, is clothed with ambiguity, myths and hypocrisy. Publicly, there is widespread indignation and condemnation concerning the plight of these youths. Their visible presence on the downtown street corners of many large Canadian cities is seen in some quarters as a failure of existing public services — social, enforcement and legal — to deal adequately with the problem. A sharp disparity exists between what is publicly said should be done and what is actually done to reduce the occurrence of juvenile prostitution. While in the rhetoric of public debate the needs of these youths are allegedly recognized, the services available to them either are limited in scope, or in some instances, have been curtailed.

Speaking off the record, many experienced professionals working with young prostitutes have adopted a defeatist attitude that little can constructively be done to help these youths. From the perspective of these workers, Canadian society is socially and ethically divided with respect to mounting substantial and relevant programs which might ameliorate the situation. Some of the "quick-fix" proposals made to control the problem, they conclude, constitute little more than an expedient wall-papering of a deeply-rooted and complex problem. If introduced, these proposals would only serve to reduce the visibility of a public nuisance, but would not alter the basic dimensions of the problem.

Most of the mainline public services either deal minimally with these youths, or because of difficulties involved in working with persons engaged in immoral and, on occasion, criminal activities, the credibility of these programs may be challenged. There are few success stories involving the rehabilitation of juvenile prostitutes. Much anger is also voiced publicly concerning the allocation of scarce public resources to assist deviant youths who are difficult to reach, who even if helped may revert to prostitution, or who may be seen to be exploiting public services for their own ends.

Prostitution is big business in Canada. Its full dimensions are unknown. It is evident, however, that a sizeable number of Canadians are customers of adult and juvenile prostitutes. For many young hustlers, prostitution is the entry point for starting a criminal career. Until recently, the brunt of public condemnation focussed largely upon prostitutes themselves. The other side of

the problem, that involving tricks or customers, was ignored or shielded from public attention. A measure of the sense of public ambiguity surrounding this issue is indicated by the absence of accurate official statistics for Canada about the numbers of persons charged with soliciting, and by the fact that there is no official documentation at the national level about the customers and prostitutes.

In undertaking its research, the Committee found that little was known about: the backgrounds and careers of these youths; the types of public and community services available to help them; the efficacy of existing enforcement practices and legal sanctions; and whether and under what conditions these youths may be willing to seek and accept assistance. Because the unsavoury aspects of juvenile prostitution challenge the roots of Canadian society's moral values, in response to widespread public concern, various instant remedies have been proposed in order to contain or eliminate this problem. Contrasting perspectives alternately portray juvenile prostitutes as exploited deviant victims who need special treatment and services, or they are depicted as potential or actual criminals who should be disciplined and punished. Depending upon which perspective is adopted, or whether elements of both viewpoints are drawn upon, the solutions proposed call for either a sharp extension of outreach services, or the amendment of legislation with respect to: broadening the definition of soliciting; the laying of charges against the customers of prostitutes; and the introduction of stiffer penalties for pimps living on the avails of prostitution. In considering these options, in the Committee's judgment there is insufficient information available to assess their validity and potential efficacy in relation to dealing effectively with the problem.

Little is known about youths who become prostitutes. It has been variously suggested that: these youths have come from poor or disadvantaged backgrounds; they were physically and sexually abused as children; their parents or guardians were irresponsible and cast them out on the streets; and they were exploited having no other alternatives to which to turn. In some quarters, it is also believed that persons of particular social, economic or ethnic backgrounds are more likely to become prostitutes than those having grown up in different circumstances. Little is also known about how these youths actually become prostitutes, the numbers working on a part-time or full-time basis, or whether they work alone, in groups or under the control of pimps.

The Committee's Terms of Reference ask it to determine the incidence and prevalence in Canada of prostitution involving young persons, and to examine the relationship between the enforcement of the law and the other mechanisms used by the community to protect young persons from this form of sexual exploitation. In reviewing its mandate, the Committee identified a number of social and legal issues requiring documentation. In this regard, it drew upon the counsel of a number of persons from across the country having considerable experience in working with juvenile prostitutes and reviewed the few available reports dealing with the issue. It was on this basis that a survey was mounted in several large Canadian cities in seven provinces which obtained

information directly from 229 juvenile prostitutes. The findings of this survey are given in Chapters 43-46. In this chapter, the prostitution-related offences in the *Criminal Code* are reviewed. Before considering these provisions, some preliminary points should be noted:

1. *The practice of prostitution per se is not an offence under Canadian law.* A prostitute commits no offence by earning his or her living from sexual commerce. Rather, the offences in Part V of the *Criminal Code* are intended either to abate the nuisance caused by flagrant solicitations in public places, or to suppress derivative practices which are unacceptable socially, for example, pimping, living on a prostitute's avails, or keeping a common bawdy-house.

2. *A municipality cannot constitutionally prohibit, nor can a province validly empower it to prohibit, persons from soliciting on public streets for the purpose of prostitution.* This is a matter within Parliament's exclusive constitutional power to pass laws in relation to the criminal law.[1] Accordingly, municipal by-laws that directly purport to prohibit this activity are, to that extent, of no force or effect.[2]

Although the Canadian criminal law relating to prostitution has many aspects, it can conveniently be grouped into four categories:

1. Soliciting for the purpose of prostitution;
2. Procuring a person to become a prostitute or to have illicit sexual intercourse with another person;
3. Living on the avails of prostitution of another person; and
4. Keeping a common bawdy-house.

Soliciting for the Purpose of Prostitution

Section 195.1 of the *Criminal Code* provides that "every person who solicits any person in a public place for the purpose of prostitution is guilty of an offence punishable on summary conviction."[3] This section was enacted in 1972,[4] and replaced an earlier provision which stated that "every one commits vagrancy who, being a common prostitute or night walker is found in a public place and does not, when required, give a good account of herself."[5] While the repealed section was in the nature of a pre-emptive strike at female prostitutes who merely attended at public places for the apparent purpose of plying their trade, the provision enacted in 1972 (namely, section 195.1) was, in different respects, both wider and narrower in scope. On the one hand, it applied to "every one", and thus comprised both female and male prostitutes. On the other hand, however, it proscribed only the specific act of soliciting a person in a public place for the purpose of prostitution. In this legislative amendment can be seen the law's evident policy of attacking the nuisances or derivative social evils engendered by prostitution, rather than proscribing prostitution itself.

Section 195.1 proscribes soliciting any person in a public place for the purpose of prostitution; the most contentious part of this formula has proven to be

the phrase "solicits . . . for the purpose of prostitution". Even so, the legal meaning of the word "prostitution" is clear. It is not limited to acts of sexual intercourse engaged in for monetary gain.[6] Rather, the word "prostitution" connotes either the offering of a person's body for the purpose of sexual intercourse or other sexual gratification, in return for payment, or the performance of physical acts for the sexual gratification of others, in return for payment.[7] Further, the word "prostitution" as used in Section 195.1 does not necessarily imply a course of conduct. A single sexual act will suffice, if the act is of the required character.[8]

In order for an accused prostitute to be convicted of "soliciting" under section 195.1 the accused must both demonstrate an intention to make herself or himself available for prostitution, and exhibit pressing or persistent conduct towards the person sought to be solicited.[9] Where a prostitute merely intimates his or her sexual availability by means of body gestures or other non-intrusive means, such conduct falls outside the prohibition.[10] Further, where a prostitute approaches several persons in succession, but is neither pressing nor persistent in approaching any of them, the cumulative effect of such encounters does not amount to "pressure or persistence."[11] In order for a section 195.1 charge to succeed, at least one encounter between a prostitute and the person sought to be solicited must involve pressure or persistence on the prostitute's part.[12] Where the solicitation is of the required character, however, the section 195.1 offence is committed. Whether an act of prostitution actually results from the solicitation is irrelevant to the charge.[13]

Section 195.1 applies to acts of soliciting by both female and male prostitutes.[14] Accordingly, it matters not whether the prostitute in question adopts the clothing and mannerisms of a person of the opposite sex.[15]

Canadian courts have differed on the question of whether a person who is not himself a prostitute, but who actively attempts to engage a prostitute's services, may be convicted of the section 195.1 offence. The British Columbia Court of Appeal has held that the phrase "for the purpose of prostitution" implies a purpose that is personal to the one who solicits and that, accordingly, a customer does not "solicit for the purpose of prostitution".[16] Conversely, the Court of Appeal for Ontario has held that a person who actively seeks out a prostitute's services can be convicted of this offence, provided the solicitation is of the required pressing or persistent character.[17] On this aspect of section 195.1, Canadian law is in a somewhat unsettled state.

The soliciting offence in section 195.1 is only committed where the solicitation is made in a "public place", which is defined as including any place to which the public has access as of right or by invitation, express or implied.[18] Although this broad definition usually presents little difficulty, some refinements of judicial interpretation have been introduced in the context of solicitations made within or from a motor vehicle. The Supreme Court of Canada has held that, where the solicitation is made while both parties are inside an automobile (notwithstanding that the automobile is parked on a public street),

the automobile is not a "public place" and the section 195.1 offence is therefore not made out.[19] Where, however, the solicitation is made from a person inside an automobile to a person who is in a "public place" (for example, on a sidewalk), the "public place" aspect of the offence is satisfied.[20]

That the section 195.1 offence, due partly to its vague wording and partly to its judicial interpretation, fails to provide an effective legal means for controlling street prostitution has been recognized. Several Canadian municipalities have passed by-laws intended to supply this deficiency, but these have been held unconstitutional as invading Parliament's exclusive power to legislate in the area of criminal law.[21] Police forces, largely without success, have resorted to laying other sorts of charges, for example, counselling to commit an act of gross indecency, obstructing traffic, and loitering.[22] Nor has the seeming inadequacy of the section 195.1 offence escaped the attention of the judiciary, who are bound to interpret the law as it is written. In the leading case of *R. v. Whitter*,[23] *Mr. Justice McIntyre for the Supreme Court of Canada stated*:[24]

> It may well be that the parliamentary intention in this regard in enacting s. 195.1 of the *Code* was that described by the learned dissenting Judge [namely, to abate the social nuisance and inconvenience caused by the practice of soliciting for prostitution in public]. For the reasons which I have endeavoured to express above, however, it is my opinion that the enactment does not give effect to that intention, and renders compliance with the terms of the enactment and achievement of any such parliamentary intention impossible. If change is desirable in this respect, it is my view that legislative action would be necessary.

Procuring

Section 195 of the *Criminal Code* provides that:

1. Every one who

   (a) procures, attempts to procure or solicits a person to have illicit sexual intercourse with another person, whether in or out of Canada,

   (b) inveigles or entices a person who is not a prostitute or a person of known immoral character to a common bawdy-house or house of assignation for the purpose of illicit sexual intercourse or prostitution,

   (c) knowingly conceals a person in a common bawdy-house or house of assignation,

   (d) procures or attempts to procure a person to become, whether in or out of Canada, a prostitute,

   (e) procures or attempts to procure a person to leave the usual place of abode of that person in Canada, if that place is not a common bawdy-house, with intent that the person may become an inmate or frequenter of a common bawdy-house, whether in or out of Canada,

(f) on the arrival of a person in Canada, directs or causes that person to be directed or takes or causes that person to be taken, to a common bawdy-house or house of assignation,

(g) procures a person to enter or leave Canada, for the purpose of prostitution,

(h) for the purposes of gain, exercises control, direction or influence over the movements of a person in such manner as to show that he is aiding, abetting or compelling that person to engage in or carry on prostitution with any person or generally,

(i) applies or administers to a person or causes that person to take any drug, intoxicating liquor, matter or thing with intent to stupefy or overpower that person in order thereby to enable any person to have illicit sexual intercourse with that person is guilty of an indictable offence and is liable to imprisonment for ten years.

3. No person shall be convicted of an offence under subsection (1), other than an offence under paragraph (j) of that subsection, upon the evidence of only one witness unless the evidence of that witness is corroborated in a material particular by evidence that implicates the accused.

4. No proceedings for an offence under this section shall be commenced more than one year after the time when the offence is alleged to have been committed.

The various procuring offences outlined in section 195(1) make illegal the practice known colloquially as "pimping". The law relating to procuring is relatively straightforward and the major legal principles can be stated briefly:

- In order to secure a conviction for "procuring", the Crown must show that some active part was played by the accused whereby he or she was able to cause, induce, or persuade the person procured to engage in illicit sexual intercourse or prostitution.[25]
- "Prostitute" in the context of section 195 means a person of *either* sex who engages in prostitution.[26]
- The phrase "illicit sexual intercourse" in section 195(1) does not necessarily mean contrary to law, but has broader connotation. Accordingly, it includes sexual intercourse that is contrary to moral standards or that offends religious prescriptions.[27]
- It is irrelevant to this offence whether the person who is procured consents to engaging in prostitution or illicit sexual intercourse.[28]
- On a charge under section 195(1)(a), the Crown is not required to show that an act of sexual intercourse involving the person procured actually took place. The offence is directed at the conduct of the procurer in facilitating the illicit sexual intercourse, regardless of whether a sexual act is consummated.[29] Accordingly, where no sexual intercourse is proven, an accused may nevertheless be convicted of an attempt to procure pursuant to section 195(1)(a).[30]
- However, on a charge of procuring or attempting to procure a person to become a prostitute, contrary to section 195(1)(d), it is no offence if the person procured is already a prostitute, or if the accused believes that the

person is a prostitute. Parliament intended in this section to attack the social evil of recruiting a person, not already a prostitute, to enter into that life.[31]

- No person may be convicted under sections 195(1)(a) to 195(1)(i) upon the evidence of only one witness, unless the evidence of that witness is corroborated in a material particular by evidence implicating the accused.[32] Further, no proceedings under section 195 may be commenced more than one year after the time when the offence is alleged to have been committed.[33]

Living on the Avails of Prostitution

Section 195 of the *Criminal Code* provides that:

1. Every one who

   (j) lives wholly or in part on the avails of prositution of another person, is guilty of an indictable offence and is liable to imprisonment for ten years.

2. Evidence that a person lives with or is habitually in the company of prostitutes, or lives in a common bawdy-house or house of assignation is, in the absence of evidence to the contrary, proof that the person lives on the avails of prostitution.

4. No proceedings for an offence under this section shall be commenced more than one year after the time when the offence is alleged to have been committed.

In a prosecution for living on the avails of prostitution, it is not sufficient for the Crown merely to establish payment by the prostitute to the accused. Parliament, by using the phrase "*lives* on the avails of prostitution" intended that the simple receipt of money from a prostitute be outside the prohibition.[34] The offence under section 195(1)(j) requires proof that the accused at least either received directly or in kind all or part of the prostitute's proceeds from prostitution, or that the accused in some way had those proceeds applied to support his living.[35] The words "living on" connote living parasitically. Accordingly, persons who merely offer prostitutes' services which are offered to the public generally, for example, doctors, lawyers, or retailers, do not thereby live on the avails of prostitution.[36]

Where, however, the accused performs a service which is, of its nature, referable to prostitution and to nothing else, the offence is clearly made out. An accused who advertises a prostitute's readiness to prostitute herself, in return for payment from same, manifestly lives on the avails of prostitution.[37] Moreover, the court in whose judicial district the acts of prostitution take place has jurisdiction to try this offence, notwithstanding that the "avails" thereof (namely, the monetary proceeds) are sent by telegraph money order to the accused in another province.[38]

In *Nobulsi v. The Queen*,[39] the accused was a waiter in a club frequented by prostitutes. He was instrumental in introducing club patrons to the prostitutes therein, and exacted payment from the prostitutes for each patron so introduced. The accused was convicted of living on the avails of prostitution, and his appeal against conviction was dismissed. The Court held that the accused's garnering of customers for the prostitutes, his communication of their availability to prospective customers, and his receipt of payment from the prostitutes for services rendered, provided ample evidence of his guilt.

A prostitute on whose avails another person lives may not be convicted of the offence of conspiring to commit the section 195.1 offence,[40] nor should the prostitute be considered an accomplice of the person who lives on his or her avails.[41] Further, the presumption in section 195(2) applies only where it is established that the accused lives with, or is habitually in the company of, prostitutes. It has no application where the accused is shown to have closely associated with one prostitute only.[42]

The following two legal decisions are particularly relevant to the Committee's mandate, given the youthful ages of the prostitutes involved. Both decisions deal with the legal principles applicable to the offence of living on the avails of prostitution.

Fisetze v. The Queen[43]

The accused, a 48 year-old male who was a housepainter by profession, was convicted at trial of living on the avails of prostitution and sentenced to imprisonment for two years.

The evidence disclosed that the accused drove from his home in Hull, Quebec, to Toronto, for a holiday. He took about $550 with him, of which his wife contributed $250. After he arrived in Toronto, he was introduced to a 14 year-old girl by a mutual male friend. The three of them drove to Windsor, Ontario, where they spent the night. From there they went to Hamilton, then back to Toronto, then to Sudbury, and finally to Val d'Or, Quebec. The accused paid all of the expenses of the trip for both himself and the girl. Throughout the trip, the accused and the girl occupied the same room and slept together.

During the five days that the accused and the girl spent in Val d'Or, the accused required the girl to hand over to him some $60, which she had earned by prostituting herself with several different men. There was no evidence that the accused procured the girl's customers. The accused was arrested on the basis of the girl's complaint to the police, which was made five days after she and the accused had arrived in Val d'Or.

The accused successfully appealed his conviction for the offence of living on the avails of prostitution. The Court noted the accused's reprehensible behaviour,[44] but held that the elements of this offence had not been made out. The offence requires more than mere payment by a prostitute to the accused, and an accused who accepts such payment in these limited circumstances does not live on the avails of prostitution. Further, the presumption in section 195(2) applies only where it established that the accused lives with, or is habitually in the company of, prostitutes. It has no application where the accused is shown to have closely associated with one prostitute only. Accordingly, the accused's appeal was allowed and his conviction quashed.

R. v. Braithwaite[45]

The accused was convicted on charges of living on the avails of prostitution, being in a dwelling-house with intent to commit an indictable offence, attempting to procure a female to have illicit sexual intercourse, and forceable confinement. He received a sentence totalling nine years' imprisonment, and appealed therefrom. The Nova Scotia Court of Appeal considered the sentence imposed to be fit in the circumstances and dismissed the accused's appeal. The facts on which the accused's convictions and sentence were based are cited below.

The offence of being in a dwelling-house with intent to commit an indictable offence occurred when one of the young female complainants was alone in her parent's home. The accused and his brother entered the residence, uninvited, through an unlocked door. They had previously seen the female complainant at a service station where she was employed. After illegally gaining entrance, they invited her out for a drink. She reluctantly agreed, and asked them to wait outside in the car, which they did. She then telephoned her father, who came home and spoke to the two men. They left without further incident.

The accused was convicted of two counts of living on the avails of prostitution. The first count involved a girl, B., who was only 14 when she first met the accused, who was then 28. A personal relationship developed between the two, which included sexual relations. In 1979, B. travelled to California, where she met the accused and worked for him as a prostitute. Later that year, she was returned to Nova Scotia by the California authorities. In January, 1980, she resumed her relationship with the accused in Nova Scotia, and reverted to working for him as a prostitute in that province. Later that year, the accused assaulted B., which prompted her to leave the area and return to California.

The second count of living on the avails of prostitution, and the separate charge of procuring, arose out of a relationship between the accused and two sisters, L. and M., aged 16 and 18. These girls came from a broken home and there was evidence that L. had worked previously as a prostitute. In January, 1980, the accused met the sisters in a tavern in Halifax. As a result of their conversation, L. and M. agreed to prostitute for the accused. He drove them to a nearby residence and arranged for them to reside with his girlfriend. He provided L. with clothing and false identification, and she started to work for him as a prostitute, turning over all of her earnings to him. The other sister, M., was reluctant to prostitute herself, although she had sexual relations with the accused on several occasions. She persisted in her refusal to engage in prostitution, and as a result both she and her sister L. were assaulted by the accused. The sisters eventually left the accused's residence and returned to their mother's home.

The charge of forceable confinement arose out of an incident involving a fifth young woman, D., which occurred in late 1978. She was in a lounge in Halifax with a previous male acquaintance, P. An altercation took place between the accused and P., during which D. was placed in the accused's vehicle by a third male. She was subsequently driven to the accused's residence and forced to take cocaine. During the succeeding days, the accused physically assaulted D., and forced her to engage in sexual intercourse and acts of gross indecency. He also made it clear to her that she was henceforth to work for him as a prostitute. At the first available opportunity, D., fled to Montreal.

The Nova Scotia Court of Appeal held that a sentence totalling nine years' imprisonment was appropriate, having regard to the serious nature of the offences and to the ages of the young women involved. The Court stated:[46]

> The appellant's activities and background unfortunately show little respect for the law and the rights of other persons. The learned Chief Justice was satisfied that the appellant was the mastermind in the operation and there was ample evidence to support that conclusion. Viewed as a whole, there was evidence here of a system which involved the procurement of very young girls and the use of force and intimidation in the retention of their services. The girls involved were between the ages of fourteen and eighteen. The primary consideration on sentencing had to be not only deterrence but also the protection of teenagers from what the learned trial judge quite properly regarded as an initiation into a life of prostitution.

Keeping a Common Bawdy-House

Section 193 of the *Criminal Code* provides that:

1. Every one who keeps a common bawdy-house is guilty of an indictable offence and is liable to imprisonment for two years.

2. Every one who

   (a) is an inmate of a common bawdy-house

   (b) is found, without lawful excuse, in a common bawdy-house, or

   (c) as owner, landlord, lessor, tenant, occupier, agent or otherwise having charge or control of any place, knowingly permits the place or any part thereof to be let or used for the purposes of a common bawdy-house, is guilty of an offence punishable on summary conviction.

3. Where a person is convicted of an offence under subsection (1), the court shall cause a notice of the conviction to be served upon the owner, landlord or lessor of the place in respect of which the person is convicted or his agent, and the notice shall contain a statement to the effect that it is being served pursuant to this section.

4. Where a person upon whom a notice is served under subsection (3) fails forthwith to exercise any right he may have to determine the tenancy or right of occupation of the person so convicted, and thereafter any person is convicted of an offence under subsection (1) in respect of the same premises, the person upon whom the notice was served shall be deemed to have committed an offence under subsection (1) unless he proves that he has taken all reasonable steps to prevent the recurrence of the offence.

It is also an offence, punishable on summary conviction, for any one who "knowingly takes, transports, directs, or offers to take, transport, or direct any other person to a common bawdy- house".[47]

Section 195 creates a number of offences, the most important of which is the offence outlined in section 195(1), namely, "keeping a common bawdy-

house". The legal significance of the terms "common bawdy-house" and "keeping a common bawdy-house" is elaborated below:

Common Bawdy-House

The *Criminal Code* contains the following definitions:[48]

"Common bawdy-house" means a place that is

(a) kept or occupied, or

(b) resorted to by one or more persons for the purpose of prostitution or the practice of acts of indecency;

"Place" includes any place, whether or not

(a) it is covered or enclosed

(b) it is used permanently or temporarily, or

(c) any person has an exclusive right of user with respect to it.

In *Patterson v. The Queen*,[49] the Supreme Court of Canada held that the phrases "kept or occupied" and "resorted to" in the definition of "common bawdy-house" connote a frequent or habitual use of the premises for the purposes of prostitution or the practice of acts of indecency. The Court held that a place may be considered a common bawdy-house where any one or more of the following scenarios is established:[50]

1. Where there is actual evidence of the continued and habitual use of the premises for the impugned purposes;[51]
2. Where there is evidence of the reputation in the neighbourhood that the premises constitute a common bawdy-house;[52] or
3. Where there is evidence of such circumstances as to make the inference that the premises were resorted to habitually for the impugned purposes, a proper inference for the Court to draw.[53]

Any defined space is capable of being a common bawdy-house, if there is localization of a sufficient number of acts of prostitution or indecency within its specified boundaries.[54] Where a building has several rooms, for example, not every room must be used for the impugned purposes in order for the building to qualify as a common bawdy-house, nor must a particular room be used exclusively for such purposes.[55]

In determining whether certain acts are "indecent" within the definition of common bawdy-house cited above, the courts employ, as a test, the Canadian contemporary standard of tolerance.[56] If, employing this standard, the act or acts are patently offensive and would not be tolerated, then the element of indecency has been met. Acts of heterosexual group sex, be they normal or deviate, and which take place within the confines of a private dwelling-house, are not "acts of indecency". Accordingly, a house in which such acts are

engaged in is not, without more, a common bawdy-house. The average reasonable person in Canada would, having regard to prevailing community standards, be prepared to tolerate such activity, at least where no attempt is made to proselytize and where the owner is conscientious about the ages and sensibilities of the revellers whom he invites.[57]

On the other hand, the physical act of masturbation, performed for a fee on complete strangers, constitutes an act of indecency, and premises in which such activity takes place (although ostensibly a "massage parlour") are properly considered a common-bawdy house.[58] Further, the word "prostitution" in the definition of common bawdy-house is not limited to cases of sexual intercourse or to cases where a person offers his or her body in a passive way. Rather, it also includes physical acts in which a person, in return for payment, actively assists another in achieving sexual gratification.[59]

Keeping a Common Bawdy-House

The *Criminal Code* defines a "keeper" as follows:[60]

"Keeper" includes a person who

(a) is an owner or occupier of a place,

(b) assists or acts on behalf of an owner or occupier of a place,

(c) appears to be, or to assist or act on behalf of an owner or occupier of a place,

(d) has the care or management of a place, or

(e) uses a place permanently or temporarily, with or without the consent of the owner or occupier.

Where a place is a common bawdy-house, however, it is not every "keeper" of that place who is liable to be convicted of the offence of keeping a common bawdy-house. In order to constitute this offence, there must be something more than the keeping of a place whose use, by someone other than the accused, makes it a common bawdy-house.[61] The Crown must show that the accused knew that the place which he "kept" was being used for the purpose of prostitution or acts of indecency.[62] The essence of this offence is that the accused knowingly and actively provided a place where the impugned acts could be engaged in.[63]

For example, the owner of a house leased to a tenant who, without the owner's knowledge, operates it as a common bawdy-house, cannot be convicted of the offence of keeping a common bawdy-house.[64] Where a "keeper" merely permits a place to be used as a common bawdy-house, without taking any part in its actual operation, the section 193(2)(c) offence is available.[65] The latter provision is a lesser, included offence where the offence of keeping a common bawdy-house is charged.[66]

- Where a sole prostitute resorts to a hotel on several occasions for the purpose of prostitution, the entire hotel does not thereby become a common bawdy-house.
- Further, in the absence of evidence that the prostitute resided in a particular room or that on each occasion the same room was used, there is no evidence that even a part of the hotel is a common bawdy-house. Accordingly, a charge of keeping a common bawdy-house against the prostitute must, in these circumstances, be dismissed.[67]
- A women who uses her residence on a regular basis for the purpose of prostitution keeps a common bawdy-house, notwithstanding that her residence is not used by other prostitutes for this purpose.[68]
- Where the only Crown evidence on a charge of keeping a common bawdy-house is that, on two occasions on the same night, employees of a massage parlour offered to perform indecent sexual acts with male patrons, such evidence is insufficient to establish habitual use and the accused employees must be acquitted.[69]
- Similarly, premises at which a stag party was held one evening, during which several acts of sexual intercourse took place, do not qualify as a common bawdy-house, in the absence of evidence that such premises were used for like purposes on prior occasions.[70]
- A club whose principal business purpose is to provide an outlet for various sexual activities such as group sex or spouse-swapping, where sexual acts occur on the premises, and where sexually oriented literature and paraphernalia are provided to club patrons, is a common bawdy-house within the definition of that term in the *Criminal Code*.[71]

1983 Changes and 1984 Amendments

The 1983 Amendments introduced two changes to the scheme of prostitution-related offences in Part V of the *Criminal Code*:

- The former sections 182 and 183, which provided special police powers to enter and search a common bawdy-house for a female present therein, and to question both her and the keeper of the place under oath, were repealed.[72]
- The procuring offences in section 195 were made applicable to persons of *either* sex who are procured for prostitution. Under the former section, only a person who procured *females* for prostitution or illicit sexual intercourse could be convicted of this offence.[73]

In February, 1984, the Minister of Justice tabled Criminal Law Reform Bill (Bill C-19) which included the following proposed amendments to section 195.1 of the *Criminal Code* defining:[74]

> " 'prostitution' includes obtaining the services of a 'prostitute'; and
>
> 'public place' includes a motor vehicle located in or on a public place."

While the former provisions were not in force when the Committee's research was conducted and the latter had not yet been enacted, the findings of

the National Survey on Juvenile Prostitution provide documentation concerning the nature of the activities which may be affected by the enforcement of these proposed changes to the *Code*.

Limitations of Existing Provisions

"Juvenile prostitution" has no specific status in Canadian law. Rather, it is dealt with under more general legislation pertaining, at the provincial level, to child welfare, and at the federal level, to the regulation of prostitution generally. A young prostitute who, by reason of his or her age, is technically a "child" under the relevant child welfare legislation may be considered "in need of protection" and thus be eligible for services provided by child welfare authorities in that locality. With the repeal of the *Juvenile Delinquents Act*, he or she can no longer be deemed a "juvenile delinquent". For the young prostitute who neither seeks nor is amenable to institutional help, as documented by the findings of the National Juvenile Prostitution Survey conducted by the Committee, the protection the law affords is tenuous.

The phenomenon of juvenile prostitution fits very uncomfortably into the existing framework of sexual and prostitution-related offences in the *Criminal Code*, with respect both to the prostitute and to his or her "patron". That young prostitutes are typically 14 or older, and hence capable of giving a valid legal consent to most forms of sexual conduct, renders the sexual offences in the *Criminal Code* difficult to apply. On the other hand, the prostitution-related offences in the *Criminal Code* are directed not at prostitution *per se*, but rather at its undesirable manifestations, for example, the public nuisance caused by flagrant solicitations on city streets, and the unacceptable economic coercion endemic in the practices of procuring (pimping) and "living on the avails of prostitution". Moreover, once a person who engages in prostitution becomes subject to the adult criminal justice system (this age is currently 18),[75] he or she is viewed more as an offender than as a victim. In Ontario, for example, the legal principles and maximum sentences which apply to the offence of "procuring" (namely, acting as a pimp[76]) are the same whether the person alleged to have been procured is 16 or 66. In the Committee's judgment, Canadian criminal law has, in this context perhaps more than in others, failed to make the necessary legal distinctions between the sexually autonomous adult and the sexually vulnerable young person.

That the sexual offences in the *Criminal Code* are for the most part inappropriate in the context of juvenile prostitution was adverted to earlier; there are several reasons why this is so. First, the great majority of juvenile prostitutes are 14 or older, and hence are capable under the law of giving a valid consent to most forms of sexual conduct. Second, where a female prostitute is, say, 15 years-old, and is paid by a "trick" to have sexual intercourse with him, she would likely be considered of "unchaste character", thus rendering a section 146(2) conviction against the trick difficult to secure.[77] Third, the section 167 offence of "householder permitting defilement" provides a sanction only

against the *owner, occupier, or controller of premises* who permits a *female* to have *illicit sexual intercourse*. Consequently, it has no relevance to male prostitution, to female prostitution involving acts other than sexual intercourse, or to the very prevalent practice of juveniles prostituting themselves within the confines of the trick's automobile.[78] As noted, Bill C-19 tabled in February, 1984 defines a "public place" to include "a motor vehicle located in or on a public place." Finally, although the offence of "gross indecency" could be charged, this offence effectively requires first-hand evidence of the nature of the sexual act(s) engaged in. Needless to say, neither the trick nor the young prostitute is apt to oblige the Crown in this regard.

That the substantive sexual offences in the *Criminal Code* are not intended, and do not effectively serve, to regulate juvenile prostitution is clear. **Likewise, on the basis of its review of the prostitution-related offences in the *Criminal Code*, the Committee concludes that these provisions are inadequate by themselves to alter the fundamental dimensions of the problem of juvenile prostitution. As the Committee's research findings given in this section of the Report clearly show, not only are additional amendments to the *Criminal Code* warranted, but it is evident that community and social services must be considerably strengthened in order to respond to the needs and situation of these youths.**

Juvenile prostitutes follow a way of life unknown to most Canadians. They are living for the moment selling their bodies for sexual purposes. They have broken with their families, have little education and few job skills, and have a dangerous, financially rewarding and fast-paced lifestyle. Most of these young prostitutes are involved in a way of life which they cannot readily relinquish, and which, the longer they engage in it, will likely preclude their turning to non-deviant careers.

These youths grow up in families coming from all walks of life; their experience in this respect precludes their being stereotyped. The families of some of these youths are poor, others have average incomes, and in a few instances, their parents are affluent. Some of these youths come from broken homes or have been placed with foster parents; others have grown up in happy and stable families.

What these youths have in common is that, for different reasons, many of them as children had run away from home. The majority of these youths are early drop-outs from school. Before they leave home, few have had part-time jobs and when they separated from their families, most had not tried to obtain conventional types of work. A career in prostitution becomes a means of easily earning an income well above that which they feel that they can otherwise obtain. In their new way of life, they enjoy the excitement and vibrancy of the street, and while most quickly became "streetwise", they are typically immature and unrealistic with respect to the harms they are incurring to themselves and in relation to their aspirations for the future. With few exceptions, their hopes for the future are fantasies unlikely to be realized.

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At different times in their lives, most of these youths have been in contact with different branches of public services. These services have included: child protection agencies; family and criminal courts; the police; medical services; probation and correctional services; and community associations and agencies. Despite, or perhaps even because of having had these contacts, few of these youths have turned directly to these services in order to help them to make a fresh start in another career.

Many of these juvenile prostitutes have also been at one time or another in conflict with the law. These encounters have not served to deter them from continuing their work as prostitutes. The prospects of their being charged or convicted of soliciting or other offences are seen as risks associated with the job.

There are no instant solutions. As indicated in its recommendations given in Chapter 3, the Committee believes that if the problem of juvenile prostitution in Canada is to be contained, and reduced, then this outcome is only likely to be realized by the provision of relevant career alternatives for these youths and by a more open public acknowledgment of the broader social issues creating this problem.

References

Chater 42: The Law Relating to Juvenile Prostitution

[1] *Westendorp v. The Queen* (1983), 2 C.C.C. (3d) 330 (S.C.C.).

[2] In addition to rendering the Calgary prostitution by-law of no force or effect, the Supreme Court of Canada judgment in *Westendorp* effectively nullified comparable by-laws in Halifax, Niagara Falls, Edmonton, and Vancouver. With respect to the Montreal prostitution by-law, see *Goldwax v. City of Montreal* (1981), 68 C.C.C. (2d) 548 (Que. S.C.). The *Goldwax* case has been granted leave to appeal to the Supreme Court of Canada, but will not be argued until the fall of 1984. But see *R. v. Kalaman* (1982), 9 W.C.B. 235 (Sask. Prov. Ct.), which was decided shortly before the Supreme Court handed down its decisions in *Westendorp*.

[3] A person convicted of an offence punishable on summary conviction is liable to a fine of not more than $500, or to imprisonment for six months, or to both: see *Cr. Code*, s. 722(1).

[4] S.C. 1972, c. 13, s. 15.

[5] Formerly s. 175(1)(c) of *Cr. Code*. The former s. 175(1)(c) offence was repealed in 1972 by S.C. 1972, c. 13, s. 15.

[6] *R. v. Dipaola* (1978), 43 C.C.C. (2d) 199 (Ont. C.A.). See also *R. v. Lantay*, [1966] 3 C.C.C. 270 (Ont. C.A.); *R. v. DeMunck*, [1918] 1 K.B. 635 (C.C.A.); and *R. v. Webb*, [1963] 3 W.L.R. 638 (C.C.A.).

[7] *R. v. DiPaola*, *ibid.*

[8] *Ibid.*

[9] *Hutt v. The Queen* (1978), 38 C.C.C. (2d) 418 (S.C.C.).

[10] *Ibid.*, See also *R. v. Rolland* (1975), 27 C.C.C. (2d) 485 (Ont. C.A.).

[11] *R. v. Whitter* (1981), 64 C.C.C. (2d) 1 (S.C.C.).

[12] *Ibid.*

[13] *R. v. DiPaola*, *supra*, note 6.

[14] *R. v. Obey* (1973), 11 C.C.C. (2d) 28 (B.C.S.C.). But see *R. v. Patterson* (1972), 9 C.C.C. (2d) 364 (Ont. Co. Ct.).

[15] *R. v. Obey*, *ibid.*

[16] *R. v. Dudak* (1978), 41 C.C.C. (2d) 31 (B.C.C.A.).

[17] *R. v. DiPaola*, *supra*, note 6.

[18] *Cr. Code*, s. 179(1).

[19] *Hutt v. The Queen*, *supra*, note 9.

[20] *R. v. DiPaola*, *supra*, note 6.

[21] *Westendorp v. The Queen* (1983), 2 C.C.C. (3d) 330 (S.C.C.).

[22] See *R. V. Munroe* (1983), 9 W.C.B. 454 (Ont. C.A.), in which the Crown's loitering prosecution was unsuccessful.

[23] *Supra*, note 11.

[24] *Ibid.*, at 6.

[25] *R. v. Barrie* (1975), 25 C.C.C. (2d) 216 (Ont. Co. Ct.). See also *R. v. Babcock* (1974), 18 C.C.C. (2d) 175 (B.C.C.A.); and *R. v. Braithwaite* (1981), 49 N.S.R. (2d) 10 (C.A.).

[26] *Cr. Code*, s. 179(1).

[27] *R. v. Robinson* (1948), 92 C.C.C. 223 (Ont. C.A.).

[28] *Ibid.*

[29] *R. v. Simpson* (1959), 124 C.C.C. 317 (B. C. Co. Ct.).

[30] *Ibid.*

[31] *R. v. Cline* (1982), 65 C.C.C. (2d) 214 (Alta. C.A.).

[32] *Cr. Code*, s. 195(3). See *R. v. Turner* (1972), 8 C.C.C. (2d) 76 (B.C.C.A.).

[33] *Cr. Code*, s. 195(4).

[34] *Fisette v. The Queen* (1959), 32 C.R. 281 (Que. Q.B.).

[35] *R. v. Celebrity Enterprises Ltd.* (1977), 41 C.C.C. (2d) 540 (B.C.C.A.).

[36] *Ibid.*, See also *Shaw v. D.P.P.*, [1962] A.C. 220 (H.L.).

[37] *Shaw v. D.P.P.*, *ibid.*

[38] *Re Gayle and The Queen* (1981), 59 C.C.C. (2d) 127 (Alta Q.B.).

[39] (1965), 48 C.R. 344 (Que. Q.B.).

[40] *R. v. Murphy* (1981), 60 C.C.C. (2d) 1 (Alta. C.A.).

[41] *R. v. Clemens* (1980), 52 C.C.C. (2d) 259 (B.C.C.A.). See also *R. v. Perron*, [1969] 1 C.C.C. 266 (Que. Q.B.). But see *R. v. Fleming* (1960), 129 C.C.C. 423 (Ont. C.A.).

[42] *Fisette v. The Queen*, *supra*, note 34.

[43] *Ibid.*

[44] *Ibid.*, at 284.

[45] *Supra*, note 25.

[46] *Ibid.*, at 15. See also *R. v. Odgers* (1978), 37 C.C.C. (2d) 554 (Alta. C.A.).

[47] *Cr. Code*, s. 194. See also ss. 180, 181 and 184 of the *Cr. Code*.

[48] *Cr. Code*, s. 179(1).

[49] [1968] 2 C.C.C. 247 (S.C.C.).

[50] *Ibid.*, at 250.

[51] See, *e.g.*, *R. v. Cohen*, [1939] 1 D.L.R. 396 (S.C.C.); and *R. v. Miket* (1938), 70 C.C.C. 202 (B.C.C.A.).

[52] See, *e.g.*, *R. v. Sorko*, [1969] 4 C.C.C. 241 (B.C.C.A.); *Theirlynck v. The King* (1931), 56 C.C.C. 156 (S.C.C.); and *R. v. Roberts* (1921), 36 C.C.C. 381 (Alta. C.A.).

[53] See, *e.g.*, *R. v. Davidson* (1917), 28 C.C.C. 44 (Alta. C.A.); *R. v. James*, (1915), 25 C.C.C. 23 (Alta. C.A.); and *R. v. Clay* (1946), 88 C.C.C. 36 (Que. K.B.).

[54] *R. v. Pierce and Golloher* (1982), 66 C.C.C. (2d) 388 (Ont. C.A.).

[55] *R. v. McLellan* (1980), 55 C.C.C. (2d) 543 (B.C.C.A.).

[56] *R. v. Mason* (1981), 59 C.C.C. (2d) 461 (Ont. Prov. Ct.).

[57] *R. v. Mason*, *ibid.*, But *cf. Pitchford and Cook v. The Queen* (1982), 25 C.R. (3d) 149 (Ont. C.A.).

[58] *R. v. Laliberte* (1973), 12 C.C.C. (2d) 109 (Que. C.A.).

[59] *R. v. Lantay*, *supra*, note 6; *R. v. DeMunck*, *supra*, note 6; *R. v. Webb*, *supra*, note 6; and *R. v. Turkiewich* (1962), 133 C.C.C. 301 (Man. C.A.).

[60] *Cr. Code*, s. 179(1).

[61] *R. v. Kerim*, [1963] 1 C.C.C. 233 (S.C.C.).

[62] *R. v. Baskind* (1975), 23 C.C.C. (2d) 368 (Que. C.A.); *R. v. Catalano* (1977), 37 C.C.C. (2d) 255 (Ont. C.A.).

[63] *R. v. McLellan*, *supra*, note 53. *C.f. R. v. Maclaren* (1982), 1 C.C.C. (3d) 573 (Ont. Co. Ct.).

[64] *R. v. Kerim*, *supra*, note 61.

[65] But *cf. R. v. Wong* (1977), 33 C.C.C. (2d) 6 (Alta. C.A.).

[66] *R. v. Lafreniere*, [1965] 1 C.C.C. 31 (Ont. H.C.).

[67] *R. v. Broccolo* (1976), 30 C.C.C. (2d) 540 (Ont. Prov. Ct.).

[68] *R. v. Worthington* (1972), 10 C.C.C. (2d) 311 (Ont. C.A.).

[69] *R. v. Ikeda* (1978), 42 C.C.C. (2d) 195 (Ont. C.A.).

[70] *R. v Evans* (1973), 11 C.C.C. (2d) 130 (Ont. C.A.).

[71] *Pitchford and Cook v. The Queen, supra*, note 55.

[72] *An Act to amend the Criminal Code in relation to Sexual Offences and other Offences against the Person, S.C. 1980-81-82, c. 125, s. 12.*

[73] *Ibid.*, S.C. 1980-81-82, c. 125, ss. 11, 13.

[74] Bill C-19 (1984), section 48.

[75] The *Young Offenders Act*, S.C. 1980-81-82 c. 110.

[76] *Cr. Code*, s. 195.

[77] One of the elements of the s. 146(2) offence is that the female in question be "of previously chaste character".

[78] Comparable difficulties beset the section 166 offence of "parent or guardian procuring defilement".

Chapter 43

Social Background

The design of the survey in which information was obtained from 229 juvenile prostitutes working on the streets in eight cities across Canada is described in this chapter and findings are given from this source concerning the social and family backgrounds of these youths.

Design of Survey

In its review of existing Canadian research and literature,[1-14] the Committee found that these sources were of limited use in affording guidance concerning the situation of juvenile prostitutes. While there is an extensive foreign literature concerning many aspects of these issues, there is no surety that the findings of these studies accurately reflect the conditions which prevail on Canadian streets with respect to prostitution.

Prior to the development of the survey, the Committee considered contacting various social service agencies that came in contact with young prostitutes, and eliciting responses from workers concerning their perceptions of, and experiences with, these youths. This approach would have had the advantage of relying upon professionals who could have provided a certain amount of information; however, such professionals seldom deal with juvenile prostitutes in a setting that gives them a genuine experience of the prostitutes' working environment or lifestyle; it was also unknown whether the persons whom these workers knew were typical of juvenile prostitutes. Accordingly, this option was discarded in favour of obtaining information directly from young persons who were involved in prostitution.

In adopting this approach, it was unknown whether youths on the street would be prepared to give up a substantial amount of their time (that they might otherwise have used to earn money) without remuneration to answer a series of very personal questions. These initial misgivings were allayed during the interviews undertaken in the development of the survey's protocol when it was found that almost all of the young prostitutes contacted were willing to be interviewed. The protocol drafted for this study consisted of 244 questions

which sought to find out as much as possible about these youths and the persons with whom they associated. Detailed questions were included in order to provide documentation concerning a number of salient legal issues, such as the methods by which these youths approached and negotiated with clients. The purpose of this section of the survey was to find out whether juvenile prostitutes generally behave in a manner that is "pressing and persistent", and hence, whether the offence of soliciting (section 195.1 of the *Criminal Code*) is adequate to deal with the problem of street prostitution.

The survey was also designed to enable juvenile prostitutes to relate their experiences, air their views and tell their own stories. Throughout the survey, the youths were asked to express their feelings and opinions and to make recommendations concerning the provision of helping services that would be most useful to young persons working on the street. Since these youths usually have little opportunity to make their problems known, the Committee believes it is important that their voices should be heard. They are often perceived as a nuisance, as persons who are too lazy to seek other forms of employment, as individuals who have freely chosen an immoral, if not a criminal lifestyle, as an "undesirable element", or as some amorphous "social problem". By asking these boys and girls to speak for themselves, the Committee hoped to learn the truth about them.

In developing the survey, the Committee drew upon the valuable experience of a police officer seconded from the Metropolitan Toronto Police Force. This colleague, who served as a Research Associate to the Committee, had had extensive experience in working with young prostitutes; resulting from this guidance, the survey included questions relating to the youths' introduction and entry into prostitution, their history of running away, the distinctive experiences of male and female prostitutes, their control by pimps, the conduct of tricks and the nature of the violence and risks inherent in street life.

Interviews were conducted between February, 1982 and July, 1983 in eight cities located in seven provinces. Questionnaires were completed for 229 youths of both sexes. In order to be eligible for participation, it was necessary for the boy or girl to be no older than 20, and to have performed at least one sexual act in exchange for money, food, shelter, drugs, alcohol or some other valuable consideration (i.e., to have turned at least one trick). Most of the interviews were initiated by approaching youths on the street in areas frequented by prostitutes. In some instances, youths were contacted at street shelters and drop-in centres. ***The primary focus for the investigation was on children and youths involved in prostitution at the street level*** (the lowest echelon in the hierarchy of prostitution). ***A few youths were interviewed who had been involved both in street and massage parlour prostitution; however, these cases constituted the exception rather than the rule.*** As a result, findings were not obtained from juvenile prostitutes who may have worked primarily in other locations.

The sampling technique employed was a combination of quota and snowball methods. Because it was recognized that there were different categories of

prostitution and in order to obtain sufficient information to document the experiences of these sub-groupings, the quota set for this study was a total of 200 completed interviews. Snowball sampling denotes the contacting of new subjects on the basis of referrals made by persons who had already been interviewed. Accordingly, each respondent was asked to refer a friend who was also involved in "the life" to the researchers for an interview. Each youth was told the purpose of the survey, informed that the researchers were under contract with respect to the confidentiality of the information obtained, and asked to sign a consent form permitting the use of the information by the Committee.

The interviews were held wherever the youths felt most comfortable. Some youths were concerned that if their peers, customers or pimps saw them being interviewed, it might be assumed that they were acting as police informants and that they might suffer violence or ostracism as a result. At times, then, it was necessary to conduct the interviews away from the downtown areas in which most of the young prostitutes worked, often in such diverse locations as coffee shops, strip clubs, bars, public lavatories, street corners, cars, motel rooms and social service agencies.

The Committee acknowledges the contribution of the youths who participated in the survey. Their participation required patience to submit to lengthy and intensely personal interviews, and in many instances, considerable courage, since they may have risked violence at the hands of their pimps for failing to meet their daily quotas.

Age and Sex

Of the 229 juvenile prostitutes interviewed, 145 were females (63.3 per cent) and 84 were males (36.7 per cent); the latter group included three transsexuals (biological males who considered themselves to be females and who dressed in the attire of females). Of the girls, 106 (73.1 per cent) stated that they were heterosexuals, while eight (5.5 per cent) said that they were lesbians, and 28 (19.3 per cent) considered themselves to be bisexual. Two of the girls indicated that they were undecided about their sexuality. In contrast, only 19 males (22.6 per cent) claimed to be heterosexual, while 26 (31.0 per cent) said that they were homosexual and another 26 professed to be bisexual. Three males (3.6 per cent) were transsexuals, while another three stated that they were transvestites. Seven boys stated that they were undecided about their sexuality.

That there is a discrepancy between the proportions of male and female youths who reported being heterosexual is not surprising since male prostitutes typically cater to a clientele which is almost exclusively homosexual. Many of these males said that they had first been drawn to street life because, as homosexuals, they had been unable to find acceptance in any other milieu; they reported having been rejected or made to feel alienated at home and school when, in their early adolescence, they had become aware of their tendency to

feel attracted to other males. Too young to frequent "gay bars", many of these male youths had turned to the street as the only place where they believed that they could meet persons of like sexual preference, and where they could escape the hostility and derision of their families and peers. Other males adamantly denied being homosexual, insisting that they were "straight hustlers." These youths maintained that they engaged in prostitution only because it was an easy way to make quick money; they professed feelings of contempt for their tricks, whose homosexuality they regarded with disgust.

While the average ages of male (18.0 years) and female (17.6 per cent) juvenile prostitutes were comparable, proportionately more of the girls (27.6 per cent) than the boys (13.1 per cent) were 16 years-old or younger when they were interviewed.

Age	Males		Females		Total	
	Number	Per Cent	Number	Per Cent	Number	Per Cent
14 years	1	1.2	5	3.4	6	2.6
15 years	3	3.6	11	7.6	14	6.1
16 years	7	8.3	24	16.6	31	13.5
17 years	19	22.6	27	18.6	46	20.1
18 years	22	26.2	28	19.3	50	21.8
19 years	17	20.2	30	20.7	47	20.5
20 years	15	17.9	18	12.4	33	14.4
Not reported	—	—	2	1.4	2	0.9
TOTAL	84	100.0	145	100.0	229	99.9*

*Rounding error

The Committee believes that a number of these youths were in fact younger than their reported ages. While youthfulness is a desirable and marketable characteristic on the street, and prostitutes often tend to understate their ages when negotiating with tricks, the Committee's researchers suspected that some of the youths overstated their ages when they were interviewed. The explanation may be that the youths may have perceived the interviewers as figures of authority who might report them to child welfare agencies if their true ages were given. Also, the youths may have feared that if they gave their true ages, this information might become known on the street, thus making them subject to harassment by other prostitutes, many of whom resent having to compete with younger boys or girls.

Family Background

About four in five males (79.8 per cent) and females (85.5 per cent) stated that they were born in Canada. Fourteen boys (16.7 per cent) and 20 girls (13.8 per cent) were born outside of Canada. (The responses of three males and one female were missing). Almost half of the males (46.4 per cent) and a third of the females (34.5 per cent) said that the major part of their childhood

had been spent in a place other than their place of birth. Two in three of the youths (63.3 per cent) came from households in which their parents were married. About seven in 10 (68.5 per cent) had grown up in homes with both parents having been present (i.e., parents married or living together). During their childhood and adolescence, slightly more than a quarter (26.2 per cent) had parents who were divorced or separated.

Marital Status of Parents	Males (n=84)	Females (n=145)
	Per Cent	Per Cent
Married	66.7	61.4
Living together	2.4	6.9
Separated	9.5	13.1
Divorced	20.2	11.0
Widowed, other	1.2	5.5
Not reported	—	2.1
TOTAL	100.0	100.0

Between when they had grown up while living with their parents and when they were interviewed, 18 of the marriages of the males' parents and 28 of the marriages of the females' parents had broken up. **When they were interviewed, the total number of youths in whose families there had been a marital breakup (divorce, separation or death) was 112 (48.9 per cent), consisting of 44 boys (52.4 per cent), and 68 females (46.9 per cent).**

The juvenile prostitutes were asked if, while they were growing up, either of their parents had been away from home for extended or regular periods of time. The phrase "for extended or regular periods" was left for them to interpret on the basis of their own recollections and judgment.

Parent Absent From Home For Regular or Extended Periods	Males (n=84)	Females (n=145)
	Per Cent	Per Cent
Mother	21.4	21.4
Father	44.0	44.8

The experiences of both males and females were almost identical with respect to parental absence. In each instance, over twice as many fathers as mothers had been absent from home for regular or extended periods of time. Of the youths who said that their mothers had been absent from the home, half (49.0 per cent) attributed the absence to employment-related reasons, such as seasonal work, or working shifts, days, evenings or nights. Half (51.0 per cent) of the youths whose fathers had been away from home cited their fathers' employment as a cause of the absence. Seasonal employment accounted for slightly less than a third (30.4 per cent) of the paternal absences. One in five (19.2 per cent) of the youths' parents (38 fathers and six mothers) was away

from home because of a marital separation. Other reasons for parents being away from home included: drinking binges; hospitalization; service in the armed forces; imprisonment; and sending the boy or girl to stay with their grandparents.

Most of these youths had grown up in families in which one or other of their parents had been employed. About three in four of their fathers (73.9 per cent) had some form of employment, and among those for whom information was available, most were reported to have had jobs (92.3 per cent). Over half of the youths (54.5 per cent) reported when they were growing up that their mothers had also had jobs.

Employment Status of Parents	Mothers (n=229)	Fathers (n=229)
	Per Cent	Per Cent
Self-employed	0.4	6.6
Employed full-time	33.6	59.4
Employed part-time	20.5	7.9
Other (homemaker, student, retired)	31.9	2.1
Unemployed	3.1	3.9
Not reported, unknown	10.5	20.1
TOTAL	100.0	100.0

There was a somewhat higher rate of unemployment among both the mothers and fathers of the girls than among those of the boys; however, in each case, the number of parents in question was relatively small. In half of the families (51.2 per cent) of the boys and in over a third (37.2 per cent) of the families of the girls, both parents had been employed during their childhood. None of the boys and nine of the girls indicated that when they had been growing up, neither of their parents had been unemployed, but of these nine girls, only two had come from families in which both of their parents were employed. Overall, the great majority of these juvenile prostitutes were raised in homes in which at least one parent had had some form of employment.

Another measure of the economic situation of the youths' families is indicated by the proportion of their parents who had received some form of government financial support. These sources included: municipal and provincial welfare; unemployment insurance; worker's compensation benefits; disability payments; and other (e.g., Children's Aid Society payments).

A substantial proportion of female juvenile prostitutes, about a third, had grown up in homes in which one or both of their parents had at one time been recipients of government financial support. In situations where welfare pay-

Received Government Financial Support	Males (n=84)	Females (n=145)
	Per Cent	Per Cent
Mother	23.9	33.1
Father	10.9	31.2

ments had been provided, the circumstances of these families would also presumably have been known to the staff of these agencies. In contrast to the circumstances of young female juvenile prostitutes, only about one in nine of the boys (10.9 per cent) had grown up in a home in which his father had been the recipient of government financial assistance.

The findings concerning the educational attainments of the youths' parents indicate that proportionately more of the mothers (42.8 per cent) and fathers (47.6 per cent) of male juvenile prostitutes had completed high school and/or had taken some form of post-secondary education (technical college, college, university) than had the parents of female juvenile prostitutes (mothers, 35.9 per cent; fathers, 25.5 per cent). The findings suggest that more of the young males than young females had grown up in socially and economically advantaged backgrounds.

What stands out from these findings is that a large proportion of these youths had grown up in families having a middle class, and in a few instances, an affluent standard of living. This conclusion is further supported by their replies when they were asked whether the basic necessities, such as food, clothing and shelter, had been provided for by their parents. Three in four (76.4 per cent) said that these needs had been completely met, about one in seven (13.5 per cent) reported that these necessities had not always been fully provided for, and information on this point was unknown for the remainder.

Alcohol and Drugs

It has sometimes been suggested that juveniles who turn to prostitution tend to come from socially disadvantaged backgrounds or from families in which deviant parental behaviour exerted an unwholesome or even traumatic influence on the children's early development. One of the forms of aberrant behaviour most frequently cited as a possible source of early psychological scarring in children who later became prostitutes is parental alcohol or drug abuse. **The Committee's findings indicate that alcoholism and drug abuse are not factors that are invariably present in the families of young prostitutes, although a heavy use of alcohol was reported with respect to a relatively large proportion of the youths' fathers.**

About three in five juvenile prostitutes (58.5 per cent) reported that neither of their parents made heavy (i.e., excessive) use of alcohol or drugs. On the other hand, six boys (7.1 per cent) and 12 girls (8.3 per cent) stated that

both their mother and father were heavy users of these substances. Five boys (6.0 per cent) and 10 girls (6.9 per cent) said that only their mothers were abusers of drugs or alcohol, while 21 boys (25.0 per cent) and 41 girls (28.3 per cent) stated that only their fathers were heavy users.

Of the 11 males who stated that their mothers were heavy alcohol users, two said that this usage characteristically involved binges, six stated that their mothers were addicted and one indicated that his mother both was addicted and engaged in alcoholic binges; two boys did not specify the nature of their mothers' heavy alcohol use. Five of the 27 males whose fathers abused alcohol said that their fathers typically went on binges, while 12 of these fathers were alcohol addicts and four both went on binges and were addicted; six males did not offer any characterization of their fathers' heavy use of alcohol.

Of the 20 girls who stated that their mothers were heavy alcohol users, six said that their mothers went on alcoholic binges, eight described their mothers as addicts and four claimed that their mothers combined addiction with binging; two girls did not indicate how their mothers misused liquor. Fifty-three girls stated that their fathers were heavy alcohol users, and of these, 15 said that their fathers' use involved going on binges, 24 reported that their fathers were addicted, and 10 indicated that their fathers both went on binges and were addicted; four of these 53 girls did not specify the nature of their fathers' heavy alcohol use.

Dropping out of School

The formal educational achievements of the young prostitutes stand in stark contrast to those of their parents. Over two in five (42.3 per cent) had not progressed beyond junior high school, and two in three (66.8 per cent) had not completed more than one year of high school. In contrast, approximately a quarter (27.9 per cent) of their mothers and about a third (31.8 per cent) of their fathers had not completed junior high school. Whereas about two in five (38.4 per cent) of their mothers and a third (33.6 per cent) of their fathers had completed high school or some form of post-secondary education, only about one in seven (13.5 per cent) of the juvenile prostitutes had attained a comparable level of education (i.e., had completed either grades 12 or 13, or received some college education). None of the youths had been to university.

Clearly, it is inappropriate to characterize the educational attainments of a group of youths without taking their ages into account. It would be misleading, for instance, to conclude that these youths had typically only progressed to Grade 10 if most of them were no older than the average Grade 10 students. In this regard, an estimate was made in relation to how many of them had or had not advanced as far in their studies as youths of the same age normally might be expected to have achieved.

Table 43.1

Ages of Juvenile Prostitutes and Highest Completed School Grade

Male Juvenile Prostitutes

Highest Grade Completed	Ages of Young Males							
	14	15	16	17	18	19	20	Total
6	—	—	1	—	—	1	—	2
7	1	—	—	1	1	1	—	4
8	—	1	4	4	4	1	1	15
9	—	—	2	2	5	3	—	12
10	—	1	—	7	6	4	3	21
11	—	1	—	2	4	1	5	13
12	—	—	—	—	1	4	4	9
13	—	—	—	2	1	—	—	3
Some (community) college	—	—	—	—	—	2	1	3
Response missing	—	—	—	1	—	—	1	2
TOTAL	1	3	7	19	22	17	15	84

Female Juvenile Prostitutes

Highest Grade Completed	Ages of Young Females							
	14	15	16	17	18	19	20	Total
3	—	—	—	—	—	1	—	1
6	—	—	1	—	—	—	—	1
7	—	—	2	1	1	1	—	5
8	4	4	5	4	6	3	2	28
9	1	2	4	5	5	6	4	27
10	—	3	8	10	8	4	2	35
11	—	2	4	6	4	8	6	30
12	—	—	—	1	4	6	4	15
13	—	—	—	—	—	1	—	1
TOTAL	5	11	24	27	28	30	18	143

National Juvenile Prostitution Survey. Level of education was not reported for two young females.

Table 43.1 presents information concerning the highest school grade completed by each youth listed according to his or her age. Provincial statutes require that children be enrolled in school either by age six or seven.[15] Hence, it may be assumed that most or all of the youths began their formal education when they were six or seven years-old, and completed their first year of schooling when they were between ages six and eight. Drawing upon this information, it is then possible to estimate the proportion of these youths who had received as much education as other children of comparable ages would usually have been expected to have received (the estimate does not take into account the possibility that some of the youths either failed or "skipped" one or more years of schooling). On this basis, it is conservatively estimated that 51 males (60.7

per cent) and 79 females (54.5 per cent) had received less education than would be usual for youths their age, while only 32 boys (38.1 per cent) and 64 girls (44.1 per cent) had completed the number of grades usually attained by persons their age.

When they were interviewed, most of the youths were no longer attending school: 181 (79.0 per cent) said that they had discontinued their studies, while 47 (20.5 per cent) were still receiving some form of education; one response (0.4 per cent) was missing. Of those who stated that they were still at school, most were not full-time students, but rather, were involved in part-time studies such as night school classes or up-grading courses.

It is not possible to determine what proportion of these youths may ever return to school. However, their lifestyle on the streets is not conducive to this possibility. Even if many were motivated to resume their schooling, they would be likely impeded by such factors as their loss of study skills, alcoholism, drug use, late hours, physical and psychological debilitation, their psychological dependency on their pimps and the efforts of their pimps to dissuade them from taking any action which might enable them to break away from "the life". Many of these youths would also be hampered from returning to school by their poor self-image and their deep-seated conviction that they are incapable of achieving anything for themselves, at school or elsewhere. On the basis of the Committee's findings about their way of life working "on the street" (see Chapter 45), it appears that **most of these youths now have as much formal education as they will ever have. As a result, those who may succeed in breaking away from "the life" are likely to find only poorly paid or menial jobs (a fact of which most are aware, and which undoubtedly encourages them to continue prostituting themselves). Their bleak future prospects constitute one of the most serious social harms associated with juvenile prostitution.**

Early Sexual Experiences

The juvenile prostitutes were asked about their early sexual experiences, including how old they were when these incidents had occurred, who their partners had been and whether they had been sexually abused when they were growing up. The findings clearly show that in comparison with the accounts given by persons contacted in the National Population Survey, a substantially higher proportion of juvenile prostitutes had had their first sexual experience at a very early age. By the time they reached age seven, about one in nine boys (10.7 per cent) and one in 36 girls had been involved in some type of sexual activity; by age 11, over half of the male juvenile prostitutes (55.2 per cent) and about a third of the female juvenile prostitutes (32.5 per cent) had had a sexual experience. More than three-quarters (76.6 per cent) of the males and almost two-thirds of the females (61.8 per cent) had had a sexual experience by age 13. By age 17, virtually all of the juvenile prostitutes of both sexes had become sexually experienced.

As the findings in Table 43.2 indicate, in comparison with a nationally representative sample of Canadians, juvenile prostitutes had had their initial sexual experiences at a considerably earlier age, and by the time they were adolescents, most reported that they had become sexually experienced. In contrast, and the comparison may not be fully valid since persons of all ages were included in the National Population Survey, only two in five males (40.7 per cent) and over a quarter of females (27.6 per cent) reported having had their first sexual experiences by age 17.

Table 43.2

Age at which Juvenile Prostitutes had had their First Sexual Experiences

Age of First Sexual Experience	Males		Females	
	Juvenile Prostitution Survey (n=84)	National Population Survey (n=1002)	Juvenile Prostitution Survey (n=145)	National Population Survey (n=1006)
	Per Cent	Per Cent	Per Cent	Per Cent
Under age 7	10.7	—	2.8	0.4
7–11 years	44.5	1.5	29.7	0.4
12–13 years	21.4	3.9	30.3	0.9
14–15 years	17.9	11.3	22.6	5.7
16–17 years	2.4	24.0	12.4	20.2
ACCUMULATIVE TOTAL	96.9	40.7	97.8	27.6

National Juvenile Prostitution Survey and National Population Survey.

When the juvenile prostitutes were asked to describe their first sexual experiences, 61 boys (72.6 per cent) and 60 girls (41.4 per cent) said that they had been involved in activities that might be described as non-abusive adolescent or pre-adolescent sexual experimentation. These activities varied from "playing house" or "doctor", to mutual oral sex and vaginal penetration. Three males and three females had miscellaneous first experiences, including: "being taken advantage of" at a party while they had been intoxicated; being watched by a voyeur; turning a trick; being fondled by an employer in exchange for money; and being fondled by a homosexual adult whom the youth had met in a downtown area.

In the National Population Survey, it was found that about one in two females and slightly less than one in three males had been victims of unwanted sexual acts (Chapter 6, *Occurrence in the Population*). Fewer than one in five persons of both sexes was an adult when he or she was a victim for the first time of an unwanted sexual act. The findings from the National Juvenile Prostitution Survey closely approximate those of the National Population Survey.

Less than one in four male juvenile prostitutes (22.6 per cent) and two in five female juvenile prostitutes (40.0 per cent) reported that their first unwanted sexual experience had involved the use of threats or force to which they had unwillingly submitted.

The findings in relation to child sexual abuse indicate that youths who later became juvenile prostitutes were at no more risk when they were growing up than other Canadian children and youths of having been victims of sexual offences. In this regard, it cannot be concluded on the basis of the information available that having been sexually abused as a child was, by itself, a significant factor that accounted for their subsequent entry into juvenile prostitution.

Before they turned to prostitution, 12 boys (14.3 per cent) and 34 girls (23.4 per cent) reported that their parents had nagged them about their sexual relationships. Six boys (7.1 per cent) and 19 girls (13.1 per cent) claimed to have been involved in an incestuous relationship. Six boys (7.1 per cent)and 34 girls (23.4 per cent) said that they had been raped, while three boys (3.6 per cent) and four girls (2.8 per cent) reported that they had been gang raped. One male stated that he had been "anally raped" (i.e., buggered) by his step-father, one female was admitted to a psychiatric facility for the treatment of a mental disorder stemming from rape trauma, and another female became pregnant after having been the victim of a gang rape. With respect to having become pregnant, 17 girls (11.7 per cent) said that they had given birth to a child, 19 girls (13.1 per cent) had had an abortion and three girls (2.1 per cent) had had miscarriages (one of which had resulted from beatings). Thirteen males (15.5 per cent) reported having suffered in some way as a result of the social stigma attached to homosexuality (e.g, being taunted at school or rejected by parents). Finally, five males (6.0 per cent) and 11 females (7.6 per cent) said that they had been considered promiscuous.

The largest single group (60.3 per cent) with whom these young males and females had had their first sexual experience with consisted of friends and acquaintances. Proportionately, more girls (13.1 per cent) than boys (7.1 per cent) had had their first sexual experience with a person who was in a legal relationship of incest to them. The definition used in this respect is comparable to that specified throughout the Report (see Chapter 7, *Dimensions of Sexual Assault* and Chapter 25, *Elements of the Offences).*

Three in 10 (29.3 per cent) of the juvenile prostitutes' first sexual experiences had been either with a family member, relative or a person who held a position of trust in relation to them (males, 27.4 per cent; females, 30.3 per cent). This proportion is slightly above that documented in the National Population Survey in which one in four (24.8 per cent) of the persons had been victims of unwanted sexual acts by persons who were close to them or were responsible for their welfare.

Forty-six males (54.8 per cent) and 112 females (77.2 per cent) said that they were younger than the person with whom they had their first sexual

Table 43.3

Type of Association between Juvenile Prostitutes and their Sexual Partners in their First Sexual Experience

Type of Association Between Youth and Partner	Juvenile Prostitutes			
	Males		Females	
	Number	Per Cent	Number	Per Cent
Incest relationship	6	7.1	19	13.1
Other blood relative	9	10.7	11	7.6
Guardianship position	3	3.6	6	4.1
Other family member	2	2.4	7	4.8
Position of trust	3	3.6	1	0.7
Friend/Acquaintance	54	64.3	84	57.9
Other person (known)	2	2.4	4	2.8
Stranger	5	5.9	13	9.0
TOTAL	84	100.0	145	100.0

National Juvenile Prostitution Survey. There were four cases which were not listed (one male and three females); these are grouped in the stranger category.

experience. Thirty-two boys (38.1 per cent) and 26 girls (17.9 per cent) said that they were the same age as their first sexual partner, while five males (6.0 per cent) and four females (2.8 per cent) were older than their partners.

The first sexual experience of 36 males (42.9 per cent) and one female (0.7 per cent) was with a person or persons of the same sex as themselves. Forty-six males (54.8 per cent) and 139 females (95.9 per cent) had heterosexual first sexual experiences, while two boys (2.4 per cent) and four girls (2.8 per cent) had their first sexual experience with persons of both sexes. The response of one female was missing.

In the National Population Survey, it was found that the first sexual experience of most persons had been with a member of the opposite sex (males, 95.9 per cent; females, 95.7 per cent). The experience of youths who later became juvenile prostitutes contrasts sharply with that of other Canadians. Proportionately fewer of these young females' initial sexual experiences had involved homosexual behaviour (0.7 per cent versus 4.3 per cent) while the proportion of male youths who later became juvenile prostitutes was over 10 times that reported in the National Population Survey (42.9 per cent versus 4.1 per cent).

Most of these youths were single when they were interviewed: 79 males (94.0 per cent) and 119 females (82.1 per cent). Four boys and 11 girls said that they were living with someone, while an additional four girls stated that

they were living in a common law arrangement. One boy and five girls said that they were separated, three girls had been divorced and one was a widow. Only two youths, both girls, were married.

The extent of these youths' sexual activities as they were growing up contrasts sharply with the reported lack of discussion about sexual matters with their parents. Sixty-three boys (75.0 per cent) and 87 girls (60.0 per cent) stated that their mothers had not discussed the subject of sex with them; only 19 males (22.6 per cent) and 55 females (37.9 per cent) had talked with their mothers about sex. The fathers of 66 males (78.6 per cent) and 111 females (76.6 per cent) had not discussed sexual matters with them, while nine males (10.7 per cent) and 13 females (9.0 per cent) said that their fathers had spoken to them about this subject.

The failure of many of the youths' parents to discuss the subject of sex with them had not shielded them from becoming involved in undesirable sexual experiences. Most of these youths had felt uncomfortable about discussing sexual questions or problems with their parents: 58 males (69.0 per cent) and 85 females (58.6 per cent) said that they had not felt free to approach their mothers with such problems, while 66 males (78.6 per cent) and 104 females (71.7 per cent) had been similarly constrained with respect to their fathers. While it is unknown whether the failure of their parents to communicate openly with them about sex contributed to their sexual naivety and vulnerability, it is clear that the inability of many of the youths to be able to discuss sexual problems with their parents made it difficult for them to resolve sex-related problems, confusions and conflicts which may have contributed in some measure to their entry into "the life".

Running away from Home

The period of transition between home life and street life was generally characterized by the youths as an attempt to sever themselves from parental authority and influence. For most of the youths, this breach was achieved by the simple expedient of running away from home. **A large majority had run away from home on at least one occasion. Sixty-six males (78.6 per cent) and 108 females (74.5 per cent) stated that they had run away at least once.** On average, females had run away from home more often than males. Among males, two in five (41.7 per cent) had run away once or twice, as compared to one in five (20.7 per cent) of the females; in contrast, about a third (36.9 per cent) of the males said they had run away several times or continually, while over half (53.8 per cent) of the females had done so.

The reasons why these youths had run away from home are listed in Table 43.4 and the means whereby they subsequently supported themselves are given in Table 43.5. The reason most frequently cited by juvenile prostitutes why they had run away from home was their need or desire to escape from family problems; almost three-fifths claimed that this had been at least a principal motivating factor in their decisions to run away. A substantial proportion had

Number of Times Juvenile Prostitutes Had Run Away From Home	Males		Females	
	Number	Per Cent	Number	Per Cent
Once	22	26.2	17	11.7
Twice	13	15.5	13	9.0
Several times	17	20.2	40	27.6
Continually	14	16.7	38	26.2
Had not run away from home	2	2.4	8	5.5
Not reported	16	19.0	29	20.0
TOTAL	84	100.0	145	100.0

run away by the time they were in their early adolescence. Of the 66 males and 108 females who said they had run away, 17 boys (25.8 per cent) and 23 girls (21.3 per cent) had done so by age 10. By age 14, 81.5 per cent of the boys and 75.5 per cent of the girls had run away from home.

Few of these youths had run away from home with the express intention of becoming prostitutes. At that time, about two in five had not known about

Table 43.4

Juvenile Prostitutes' Reasons for Running Away from Home

Reasons Given For Running Away From Home	Males (n=84)		Females (n=145)	
	Number	Non-Accum. %	Number	Non-Accum. %
Desire for adventure	11	13.1	16	11.0
To explore something new	8	9.5	16	11.0
To meet new persons	5	6.0	9	6.2
To escape family problems	50	59.5	82	56.6
Problems at school	12	14.3	24	16.6
Problems with friends	5	6.0	8	5.5
Attention seeking/rebelling	4	4.8	9	6.2
To escape physical abuse from father	2	2.4	8	5.5
To escape sexual advances from father	—	—	2	1.4
Other	10	11.9	16	11.0

National Juvenile Prostitution Survey.

prostitutes and prostitution. Thirty-four males (40.5 per cent) and 56 females (38.6 per cent) said that they had not become aware of prostitution until after they had first run away. Only 19 males (22.6 per cent) and 16 females (11.0 per cent) said that they had been aware of prostitution before they had run away from home for the first time. Eight boys (9.5 per cent) and 21 girls (14.5 per cent) said that they had learned about prostitution at about the time (i.e., in the same year) when they first ran away from home.

Table 43.5

Juvenile Prostitutes' Initial Sources of Income When They Ran Away from Home

Initial Sources of Income when Ran Away from Home	Males (n=84)		Females (n=145)	
	Number	Non-Accum. %	Number	Non-Accum. %
Money brought from home	19	22.6	29	20.0
Money borrowed from friends	6	7.1	40	27.6
Living with friends	8	9.5	15	10.3
Panhandling	9	10.7	15	10.3
Prostitution	24	28.6	43	29.7
Stealing	24	28.6	24	16.6
Welfare	2	2.4	5	3.4
Social service agencies	1	1.2	2	1.4
Part-time job	3	3.6	5	3.4
Other	5	6.0	12	8.3

National Juvenile Prostitution Survey.

When the youths were asked how they had initially supported themselves after they had left home, about a fifth (21.0 per cent) said they had relied on money that they had brought with them from home. A larger proportion of the girls than the boys said that they had depended on friends: among the girls, 27.6 per cent had borrowed money from friends and 10.3 per cent actually relied on friends, as compared with 7.1 per cent and 9.5 per cent of the the boys, respectively. About one in 10 said that they had panhandled or begged for money, while 28.6 per cent of the males and 16.6 per cent of the females had resorted to stealing. Almost a third (29.3 per cent) said that they had relied on prostitution for money when they ran away. Few had received money from welfare or social service agencies. None had obtained a full-time job and only a few had initially held part-time jobs.

The average lengths of time the youths had stayed away from home varied widely. About a quarter (males, 26.2 per cent; females, 24.1 per cent) had generally stayed away from home for between one and seven days. Six boys (7.1 per cent) and 20 girls (13.8 per cent) said that the average duration of their absence from home was between one and four weeks. A further 23 males (27.4 per cent) and 46 females (31.7 per cent) said that they had left home for between one and six months, while one girl had been absent for seven months. Finally, 11 boys (13.1 per cent) and six girls (4.1 per cent) said that they had run away for periods of a year or more, with one boy stating that he had been away from home for five years.

The National Juvenile Prostitution Survey's findings clearly show that running away from home was an experience shared by most of the youths who later became juvenile prostitutes. For many of them, running away represented an immediate means of escaping from some aspect of their home environment with which they found it impossible to cope, rather than serving as an avenue through which to pursue some positive, long-term goals. This conclusion is consistent with the findings concerning the youths' immediate sources of finance, which indicate a clear lack of planning or preparation on their part, prior to their departure. While their experiences varied considerably after they had run away from home (as did the duration of their absences), this step for most of them represented a complete repudiation of their families. They entered a way of life for which they had none of the experience, skills, preparation, education or training needed to achieve a secure or conventionally self-sufficient existence. This combination of severing themselves from their families combined with their inexperience in other aspects of life created a condition of extreme vulnerability which fostered their transition to street life and to prostitution.

Memories of Home Life

In addition to obtaining information about the social situation of their families as they were growing up, the youths were also asked for their views about their formative years. They were asked about their strongest memories of their childhood; their *strongest* recollections were requested in order to obtain information which might reveal those aspects of their early lives which they believed may have subsequently influenced them. Because they were not limited to a single recollection, their replies are non-accumulative.

The young prostitutes' strongest recollection was one of continuous fighting or arguments at home: (males, 45.2 per cent; females, 52.4 per cent). About one in three (males, 27.4 per cent; females, 33.1 per cent) mentioned physical abuse. Alcohol abuse was recalled by 21.4 per cent of the males and 33.8 per cent of the females; drug abuse was highlighted by only 3.6 per cent of the boys and 8.3 per cent of the girls. Vivid recollections of sexual abuse were reported by 7.1 per cent of the boys and 21.4 per cent of the girls. A further

Strongest Recollections of Home Life	Juvenile Prostitutes	
	Males (n=84)	Females (n=145)
	Non-Accum. %	Non-Accum. %
Continuous fighting/arguments	45.2	52.4
Alcohol abuse	21.4	33.8
Drug abuse	3.6	8.3
Physical abuse	27.4	33.1
Sexual abuse	7.1	21.4
Sickness in family	11.9	20.0
Strict religious upbringing	13.1	11.0
Happy family/parents together	33.3	23.5
No strong memories	10.7	11.7
Other	17.9	14.5

11.9 per cent of the males and 20.0 per cent of the females listed a family illness as being among their most powerful memories. Recollections of a happy home life were reported by 33.3 per cent of the males and 23.5 per cent of the females. Responses categorized as "other" included memories of: poverty; "coldness, silences and neglect"; moving from place to place; living in various foster homes; having "spent childhood in hospital with polio"; and having "had many fathers". Overall, a larger proportion of the young female prostitutes than that of the young male prostitutes had retained negative recollections about their childhood.

Summary

1. Of the 229 juvenile prostitutes who were interviewed, 145 were females (63.3 per cent) and 84 were males (36.7 per cent). Three in four females (73.1 per cent) and less than one in four males (22.6 per cent) considered themselves to be heterosexual.

2. Over one in four female juvenile prostitutes (27.6 per cent) and about one in eight male juvenile prostitutes (13.1 per cent) were 16 years-old or younger.

3. About half of the parents of juvenile prostitutes (48.9 per cent) had had a marital breakup either while these youths were growing up or after they had left home.

4. During their childhood, over two in five of their fathers had been away from home for extended or regular periods of time; these absences had involved one in five of their mothers.

5. Three-quarters of their fathers and over a half of their mothers had been employed during the childhood and adolescence of the juvenile prostitutes.

6. A third of the families of female juvenile prostitutes had been recipients of government financial assistance; one in nine of the fathers of male juvenile prostitutes had received some form of public assistance.

7. On average, the parents of male juvenile prostitutes were better educated than those of female juvenile prostitutes. Well over two in five parents (45.2 per cent) of the former and less than a third (30.7 per cent) of the latter had completed high school and/or had some form of post-secondary education.

8. About two in five of the parents of juvenile prostitutes were reported to have been heavy users of alcohol or drugs.

9. Over two in five juvenile prostitutes (42.3 per cent) had not gone beyond junior high school; only a third (33.2 per cent) had completed more than one year of high school.

10. By age 11, over half of the male juvenile prostitutes (55.2 per cent) and a third of female juvenile prostitutes (32.5 per cent) had had an initial sexual experience. More than three-quarters (76.6 per cent) of the males and almost two-thirds (61.8 per cent) of the females were sexually experienced by age 13.

11. In relation to having been sexually abused when they were children, the experience of juvenile prostitutes was similar to that of other Canadian children and youths, (as documented in the National Population Survey). One in five males (22.6 per cent) and two in five females (40.0 per cent) reported that their first sexual experience had involved the use of threats or force.

12. Three in five (60.3 per cent) of these youths' first sexual experiences had been with friends and acquaintances, and less than a third (29.3 per cent) had involved a family member, a relative or a person holding a position of trust to them. The proportion in the latter category was slightly above that (24.8 per cent) documented in the National Population Survey.

13. For less than one in 142 of the girls (0.7 per cent) but for over two in five of the boys (42.9 per cent), their initial sexual experience had been with a member of the same sex.

14. A majority of juvenile prostitutes (76.8 per cent, males; 68.3 per cent, females) stated that they had not discussed sexual matters with their parents.

15. During their childhood and adolescence, three-quarters (75.9 per cent) of the juvenile prostitutes had run away from home at least once. A high proportion of these youths had run away twice or more often.

16. Immediately following running away from home, none had obtained full-time jobs and only one in 29 had obtained a part-time job.

17. Only a minority of juvenile prostitutes recalled that their childhood and adolescence had been happy and untroubled.

In looking back at their childhood, most of these youths recalled a variety of negative experiences that had made a lasting impression on them. More than a quarter of their parents had been separated or divorced during their child-

hood, and subsequently about an equal proportion of their families had experienced a marital breakup. About two in five of these youths had known some form of parental abuse of alcohol or drugs. These danger signals of family conflict indicate that many young prostitutes had come from family backgrounds that were troubled and unhappy, notwithstanding the fact that many had grown up in homes that might otherwise have appeared to have been comfortable, successful, and in some instances, socially advantaged.

The majority of these youths had grown up in homes that had left them scarred with negative and painful memories, conditions that had prompted many of them to run away from home, to drop out of school early, and ultimately, to turn to prostitution as a means of earning their livelihood.

In light of the findings concerning the high proportion of these youths who had dropped out of school early and who had run away from home, it is clearly evident that existing social services had been ineffective and had provided inadequate protection and assistance. In this respect, there can be no doubt in the Committee's judgment that special programs must be initiated and sufficiently funded to meet their needs. Accordingly, the Committee recommends that:

> **Provincial Child Protection Services develop special programs geared to serve the needs of young prostitutes and to identify the early warning signs of troubled home conditions warranting the provision of special services.**

References

Chapter 43: Social Background

[1] The Committee's general review of bibliographical sources was given in Chapter 1. As indicated by the listing of references in notes 2 — 14, these sources did not serve to identify many references concerning research on the issue of prostitution in Canada. That there is a paucity of such research information available for this country was further confirmed by the Committee's meetings across Canada with persons experienced in working with juvenile prostitutes. The references typically cited related to studies that had been undertaken abroad.

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[14] Williams, D.H., Suppression of Commercialized Prostitution in the City of Vancouver, *Journal of Social Hygiene*, 27:364-72, 1941.

[15] The relevant statutes are as follows:

Newfoundland
The School Attendance Act, 1978, S. Nlfd. 1978, c. 78, s. 3. (School begins at age six).

Prince Edward Island
The School Act, R.S.P.E.I. 1974, c. S-2, s. 1(b), as am. by S.P.E.I. 1980, c. 48, s. 1(1) (Schooling begins at age seven).

New Brunswick
Schools Act, R.S.N.B. 1973, c. S-5, s. 59(1). (Schooling begins at age seven).

Quebec
Education Act, R.S.Q. 1979, c. I-14, s. 256. (Schooling begins at age six).

Ontario
The Education Act, R.S.O. 1980, c. 129, s. 20. (Schooling begins at age six).

Manitoba
The Public Schools Act, S.M. 1980, c. 33, s. 258(1)(b). (Schooling begins at age seven).

Saskatchewan
The Education Act, R.S.S. 1978 (supp.), c. E-0.1, s. 2(g). (Schooling begins at age seven).

Alberta
School Act, R.S.A. 1980, c. S-3, s. 142(1). (Schooling begins at age six).

British Columbia
School Act, R.S.B.C. 1979, c. 375, s. 258(1)(b). (Schooling beings at age seven).

Northwest Territories
Education Ordinance, O.N.W.T. 1976(3), c. 2, s. 96(1). (Schooling begins at age six).

Yukon Territory
School Ordinance, O.Y.T. 1974(2), c. 14, s. 29. (Schooling begins after a child reaches age six years, eight months.

Chapter 44

Becoming a Prostitute

In this chapter, findings from the National Juvenile Prostitution Survey are given concerning how these youths made the transition from their home lives to becoming prostitutes. These findings are illustrated by a number of case studies.

Initial Awareness and Contacts

The youths in the National Juvenile Prostitution Survey were asked "At what age did you become aware of prostitutes and what they did?" Although all of these youths were then engaged in prostitution, it is apparent that they had not exhibited a striking precocity as children in discovering prostitutes or in learning about what they did. By age 10, 16.7 per cent of the males, and 6.9 per cent of the females had known about prostitution, while by age 13, fewer than half (47.6 per cent of the boys and 40.0 per cent of the girls) had had any knowledge of this occupation. By age 16, however, four in five youths (males, 78.6 per cent; females, 82.8 per cent) knew about prostitutes and prostitution.

The two most frequently cited means by which these youths had learned about prostitution were through the media and some friend or acquaintance who was living downtown. The former source was responsible for providing 28.6 per cent of the males and 23.4 per cent of the females with their first awareness of prostitution (invariably the youths referred to "glamourized" media depictions of prostitutes), while 22.6 per cent of the boys and 30.3 per cent of the girls said that they had first acquired this knowledge through a friend who had been living downtown. Fourteen males (16.7 per cent) and 17 females (11.7 per cent) arrived at their own conclusions deductively after watching prostitutes on downtown streets. Six males (7.1 per cent) and 17 females (11.7 per cent) learned about this vocation from an acquaintance who was a prostitute (these persons included sisters, friends, neighbours, and the mothers of three of the girls). Other sources of learning about prostitution included:

- Living in or visiting areas frequented by prostitutes;
- Being propositioned while in an area frequented by prostitutes;

- A family friend;
- Older siblings who explained prostitution as part of youth's sex education;
- A man whom the girl dated and who later turned out to be a pimp;
- Boy's father, who took him to an area frequented by prostitutes;
- A massage parlour where the girl had been hired;
- Reading a book (girl's father made her read the book in an attempt to frighten her from running away);
- Mother, whom the girl overheard discussing the logging camp where her father worked which was serviced by prostitutes;
- Friends at school;
- Youth workers;
- School sex education.

Prior to working on the streets, about two in three of the youths (males, 61.9 per cent; females, 68.3 per cent) had known at least one prostitute personally. Thirty-five males (41.7 per cent) and 73 females (50.3 per cent) said that the prostitute whom they had known was a friend, six males (7.1 per cent) and 11 females (7.6 per cent) responded that this person was an immediate family member, while one male and three females stated that the prostitute was a relative. Eleven boys (13.1 per cent) and 31 girls (21.4 per cent) said that they had been encouraged by these acquaintances to become prostitutes; 12 boys (14.3 per cent) and 20 girls (13.8 per cent) were discouraged from becoming prostitutes by the prostitutes whom they had known.

About half of the youths (52.4 per cent) said that they did not feel that there had been any single person who had been responsible for their introduction into prostitution. Among the males, a third (32.1 per cent) identified one person whom they felt was largely responsible for their becoming prostitutes. These persons included: a male friend (8.3 per cent); a pimp (1.2 per cent); the father of a friend (1.2 per cent); a girlfriend (1.2 per cent); the youth's first trick (2.4 per cent); and a brother who forced a boy to engage in oral sex while he was still a child (2.4 per cent). A further eight boys (9.5 per cent) said that they had been responsible for their own introduction to prostitution.

In contrast, about half of the girls (46.9 per cent) were able to identify a specific individual whom they felt was in large measure responsible for their becoming prostitutes. Among the persons specified were: a pimp (9.7 per cent); a male friend (7.6 per cent); the girl's father [who forced her to become a prostitute to bring in money to support the family, (0.7 per cent); the girl's mother (2.8 per cent); a sister (3.4 per cent); a girlfriend (9.0 per cent); a motorcycle gang (0.7 per cent); the girl's first trick (0.7 per cent); a male hustler (0.7 per cent); a girl's aunt (0.7 per cent); and a prostitute who was a friend of the girl's mother (0.7 per cent). Only one in 15 (6.9 per cent) of the girls felt that she was directly responsible for having become a prostitute. Many of the girls who stated that a "male friend" had been primarily responsible for their becoming prostitutes may have been referring to their pimps in euphemistic terms.

Turning the First Trick

The youths were asked how old they were when they had "turned their first trick", or had initially engaged in prostitution. Their replies, listed in Table 44.1, clearly indicate that a sizeable proportion of them, **almost half (47.6 per cent), had engaged in prostitution for the first time when they were 15 years-old or younger. Some of these youths had been young children when they had become prostitutes. Twelve males (14.3 per cent) and 28 females (19.3 per cent) had been age 13 or younger when they had turned their first trick.**

Table 44.1

Age at which Juvenile Prostitutes Turned their First Trick

Age when First Trick was Turned	Males		Females		Total	
	Number	Per Cent	Number	Per Cent	Number	Per Cent
8	1	1.2	—	—	1	0.4
10	1	1.2	1	0.7	2	0.9
11	—	—	2	1.4	2	0.9
12	2	2.4	5	3.4	7	3.1
13	8	9.5	20	13.8	28	12.2
14	8	9.5	12	8.3	20	8.7
15	17	20.2	32	22.1	49	21.4
16	21	25.0	38	26.2	59	25.8
17	13	15.5	8	5.5	21	9.2
18	7	8.3	12	8.3	19	8.3
19	4	4.8	5	3.4	9	3.9
20	—	—	1	0.7	1	0.4
Cannot recall	2	2.4	2	1.4	4	1.7
Not reported	—	—	7	4.8	7	3.1
TOTAL	84	100.0	145	100.0	229	100.0

National Juvenile Prostitution Survey.

These findings leave no doubt about the need to afford these children more effective social assistance and legal protection.

The reason given by most of the youths for turning to prostitution was that it afforded them the opportunity for rapid financial gain: 66 boys (78.6 per cent) and 95 girls (65.5 per cent) said that this was among their primary reasons for becoming prostitutes. This finding accounts for the fact that none, when they had initially left home, had had a full-time job and why only a handful had obtained some form of part-time employment. Eight males (9.5 per

cent) and 12 females (8.3 per cent) said that they began prostituting themselves out of economic necessity when they had no other source of income, while 25 boys (29.8 per cent) and 25 girls (17.2 per cent) claimed that they turned to prostitution because of their inability to find employment. One male and five females said they were forced to become prostitutes by a pimp while 25 females (17.2 per cent) said that they turned to prostitution in order to please another person who, as noted, was likely a pimp.

Table 44.2

Juvenile Prostitutes' Reasons for Turning to Prostitution

Stated Reason for Turning to Prostitution	Males (n=84)		Females (n=145)	
	Number	Non-Accum. %	Number	Non-Accum. %
Personal trauma in youth's life	7	8.3	19	13.1
Inability to cope with parents	6	7.1	22	15.2
Pregnancy out of wedlock	1*	1.2	4	2.8
Problems with drugs	13	15.5	17	11.7
Discontent with school	10	11.9	20	13.8
Discontent with job	5	6.0	1	0.7
Inability to find employment	25	29.8	25	17.2
Opportunity for rapid financial gain	66	78.6	95	65.5
Economic necessity/no other source of income	8	9.5	12	8.3
Forced by pimp	1	1.2	5	3.4
To please another person	—	—	25	17.2
To gain sexual knowledge	6	7.1	1	0.7
Other	12	14.3	12	8.3

National Juvenile Prostitution Survey.

* Presumably, the youth turned to prostitution in order to provide money for a female person whom he had made pregnant.

The vast majority of these youths said that they had not been forced into prostitution; only three males (3.6 per cent) and 23 females (15.9 per cent) said that they were induced to engage in prostitution against their will. These findings clearly indicate that, by and large, these juveniles had not been threatened and coerced into prostitution; for example, among the youths inter-

viewed, there was no evidence to suggest the existence of a proverbial "white slave trade". This finding, however, does not deny that the youths may have been subject to a wide range of subtle and less dramatic forms of inducement to engage in prostitution; their reasons for becoming prostitutes stand as firm evidence of the existence of such pressures and inducements.

Of the females who said that they were forced into prostitution, about three-fifths (60.9 per cent) said that the person who coerced them was a pimp. Two of these 23 girls (8.7 per cent) said that their sisters had forced them to become prostitutes and one girl (4.3 per cent) said she had been forced to do so by her father. Another two of these girls had been forced into prostitution by other prostitutes and one girl said that she had been subjected to pressure by a trick.

Case Studies

As a subculture, the persons involved in different aspects of prostitution have developed a special vocabulary describing persons, types of sexual acts, places and events. A glossary of some of their commonly used words and phrases, many having substantially different meanings for most Canadians, is given in Table 44.3. The case studies are grouped into the categories of: young female prostitutes; young male prostitutes; and young transvestite prostitutes. Although the transvestites whose experience is described here are legally males, in order to retain their own perception of their identities, the female gender is used in referring to them in the case studies.

Young Female Prostitutes

Case Study 1

Still living at home with her mother who knows about her street activities, Pat is a 13 year-old girl who has completed Grade 9. She grew up in a middle-class suburb. Her parents were recently divorced; her father now works in the United States. When she was nine, she began to run away from home in order to escape her parents' arguments. On these occasions, often lasting several days, she stayed with a girlfriend. Later, she turned to the downtown streets of the city. When she ran away, her mother always reported that she was missing to the police. Her mother also sought help from neighbours, school counsellors, psychiatrists and social workers.

When she was 11, she attempted to have intercourse with a boyfriend. She found school boring and often skipped classes. Pat turned her first trick when she was 12. This happened after she had been to a downtown theatre with a friend whose father had forgotten to pick them up. As the two girls were walking along a busy street, they were picked up by a 17 year-old boy who invited them to a party in a hotel. They accepted and later took drugs for the first time.

Table 44.3

Glossary of Street Words and Phrases

Around the World:
To lick and kiss a person's body and all of the orifices.

B & D: (Bondage and Discipline)
Sado-masochistic acts including being tied up, whipped, beaten or otherwise punished.

Bi: (Bisexual)
One who, on different occasions, engages in sexual acts with members of both sexes.

Blow Job:
Fellatio.

Candy/Safe:
Condom, prophylactic.

Come or Cum: (noun)
Semen, male ejaculation.

Come or Cum: (verb)
To have an orgasm, in reference to male or female.

The Dose:
General term for any venereal disease.

Drag/Being in Drag:
A male wearing female clothing.

Dyke:
A lesbian.

Fingering:
Vaginal or anal penetration by a finger or fingers.

Fist-fucking:
Anal penetration of one male by another, using a clenched fist.

Gay/Queen/Faggot:
A male homosexual.

The Game/The Life:
The lifestyle of the young prostitutes, street life generally, with all of its in-limit rules, its players, etc.

Going Down On:
It usually refers to cunnilingus but can refer to fellatio.

Golden Showers/Watersports:
Urinating on a person and thereby producing sexual arousal in the recipient. It is often performed in conjunction with manual manipulation of the customer's penis.

Half and Half:
A combination of vaginal intercourse and oral sex.

Hand Job:
Manual manipulation of a male's penis to the point of orgasm.

Hooker:
A female prostitute.

Hustler:
A male prostitute.

In the Closet:
Not openly admitting one's homosexuality; hiding it from the public; passing as a heterosexual male in one's public life, while actually being secretly homosexual.

Jerking Off:
Male masturbation.

Out of the Closet:
Openly admitting to being a homosexual; generally applies to males.

Pimp:
A person, almost always male, for whom a prostitute works and who regularly receives the prostitute's earnings or some portion thereof.

Playing with Oneself:
Female masturbation.

Queer-bashers/Head-bangers/Breeders:
Homophobic males who physically assault homosexual males.

S & M: (Sado-Masochism)
Sexual acts involving behaviours such as beating, bondage, whipping and other violence.

Score:
A term referring either to obtaining money or to having sex.

Table 44.3—*continued*

Glossary of Street Words and Phrases

Screw/Fuck/Stab:
Penetration by a penis, usually refers to vaginal penetration but occasionally is used in reference to anal penetration.

Sixty-Nine (69):
Mutual oral sex performed by two persons in a head-to-genital position.

Slut/Ho/Whore:
Derogatory terms for female prostitutes.

Spatting/Pooping:
Coprophilia, defecation in a person's mouth or on the face causing sexual arousal in the recipient. It is often performed in conjunction with manual manipulation of a customer's penis. It may involve the use of an enema.

Straight Lay:
Vaginal penetration with penis to the point of male orgasm.

The Street:
The environment in general in which young prostitutes work.

Transy:
Slang for transsexual. A biological male who believes himself to be a female (i.e., has a female gender identity) and dresses in feminine attire. Such persons may contemplate or may be in the process of undergoing sex-change procedures.

Trick:
The customer of a male or female prostitute.

Working/Working the Street:
Working as a prostitute; applies to males and females.

When Pat woke up the next morning, she was given $20. She had no recollection of having had sex. The boy told her that she could earn a lot more money the same way. Later, she was shown the streets frequented by prostitutes, and subsequently, she began to turn tricks each time she came downtown. She used the money to have "good times".

Pat works by herself, usually on weekends and the occasional week night to earn pocket money. She shares her earnings with her boyfriend; her income is supplemented by an allowance provided by her mother.

Because she feels that other sexual acts are too intimate and take too long to perform, Pat only engages in oral sex. She is popular with tricks because they think she is younger than she actually is and because she "has no boobs". Once, a man asked her to pose nude for a "children's book". She refused. The sex-for-money exchange usually lasts less than 15 minutes and takes place in the trick's car. When she is having oral sex with a trick, she tries to get it over with as quickly as possible so that she can get paid.

Pat has appeared in court several times for truancy and having run away from home. Because of her age, she has no criminal record. She sees her street hustling as being just "part of growing up". Because "the street is dirty and you have no friends you can trust", she says she is going to try to avoid that part of the city. She believes there should be special services available to parents in order to help them understand their children better. Although she now only occasionally attends school, she plans to return on a regular basis during the next term. She wants to become a veterinarian.

Case Study 2

Marie, age 15, is the seventh of eight children. As she was growing up, neither of her parents regularly worked and the family was supported by welfare. Marie says that her parents were alcoholics and that her mother had been a prostitute.

When she was 10, Marie's father forced her to suck his penis and had vaginal and anal intercourse with her. Claiming he was "making her into a woman", he forced her to engage in these acts with him until she was 13 years-old. During this period, two of her mother's customers and several older males also sexually assaulted her.

Her mother took Marie when she was 11 years-old to visit the ships docked in the harbour of a nearby port. On these visits, Marie was assigned to a cabin where as many as nine or 10 men had sex with her. As payment, she was given alcohol which she turned over to her father. Once, a sailor gave her a "Raggedy Ann" doll after having had intercourse with her.

Marie ran away from home several times. When she was 13, she was made a ward of the local child protection agency, and subsequently, she was placed in several foster homes. When she was interviewed, she was living in a youth hostel serving "end-of-the-line kids".

After leaving foster care, Marie lived with a man who gave her drugs. She went to Los Angeles with him where she learned that he worked for a network of pimps. She was forced to work the streets. When she refused or turned too few tricks, the pimp beat her up with heated wire clothes' hangers which left permanent scars on her breasts and thighs. He also locked her in a closet several times, only letting her out to urinate or have sex with one of his "friends". Once, she was forced to have intercourse with a dog. This incident was recorded as a "kiddy porn" film.

Marie escaped from her pimp when she was picked up by the Los Angeles police and was returned to Canada. Since her return, she has worked the streets on her own. Since she keeps her earnings and performs only conventional sexual acts such as "straight lays" and "blow jobs", she feels her situation has improved. She has been found delinquent by a juvenile court for repeatedly running away.

Her memories of how she was abused in Los Angeles still haunt her. She intensely resents her parents. Although she regularly visits them, she does not want to grow up to be like them. As for her hopes for the future, she says that she has "None. I'll probably be dead soon".

Case Study 3

One of two sisters, Barbara completed high school before she abruptly left home to live with a pimp. Now 18, she grew up in a happy family atmosphere. Her mother is a nurse and her father a lawyer.

When she was 16, Barbara's first sexual experience was having intercourse with a boyfriend. While she was at a downtown club with some school friends, she met the pimp with whom she is now living. It was "love-at-first-sight". Within three weeks, the pimp had persuaded her to live with him so that, together, they could share the excitement of a downtown lifestyle.

Her pimp is 27 years-old and married to a woman "back home". Pimping is his only job, a fact that Barbara had not known until they had been living together for several weeks. By then, she depended upon him completely for

emotional and financial support. Because she had left home suddenly, she feels she can't return home.

After she learned that her boyfriend worked full-time as a pimp, he began to abuse her verbally and physically. He demanded that she "work the streets" to repay him for his favours. She says that now "he hits her less often and only when I deserve it". Her quota is to earn $200 each weeknight and $300 on both Fridays and Saturdays. Out of these earnings, her pimp pays her $20 a day for coffee, cigarettes and condoms.

Barbara spoke of her pimp as being her husband. When she was interviewed, she was seven months' pregnant. She believes the child to be her pimp's. She plans to continue working on the street until the delivery. When her child is born, she intends to get a babysitter to permit her to return to work on the street.

Her pimp is "very dominant. Everything has to be his way". Once, he beat her so severely that she was hospitalized with a broken jaw and collarbone. Despite this beating, she intends to continue living with her pimp and raise her child.

Because the police know that she is working with a pimp, Barbara believes that they pay special attention to her in order to obtain information about him and other pimps with whom he associates. She has been convicted twice for soliciting. She disputes the police officers' testimony that she had grabbed the arms of tricks or had run into the street to shout offers to potential customers driving by in cars. Barbara has also been convicted of: loitering (six times); twice for counselling to commit gross indecency; and once for gross indecency after being caught having oral sex in a car.

Barbara says that she wants to have a "straight" job and raise her child. She hopes that someday her pimp will go "straight". She is addicted to street life, saying that "you always come back for more".

Case Study 4

Evette's father died when she was a child. She and her two older brothers were brought up by her mother who worked to support the family. Now 17, Evette was severely beaten as a child by her mother. This "disciplining" started each time she wet her bed when she was about age seven; it included being whipped and locked naked in a closet. She grew up living in absolute fear of her mother.

When she was eight, Evette ran away from home. She was subsequently placed in the custody of a child protection agency. Because she was regarded as a "problem child", she was rotated through several foster homes.

Once when she was 11 and had run away from a foster home, she was picked up by a stranger who took her to a vacant lot and raped her. She told no one about her first sexual experience; it was only years later that she confided to a friend what had happened.

Evette says that after the child protection agency had "given up on her", she took the advice of a foster sister, a prostitute, and started to work on the street. With her foster sister coaching her from the back seat of a car, she turned her first trick when she was 14.

Because she regards certain sexual acts as humiliating to perform, Evette refuses to let tricks have anal sex or to engage in "S & M" acts. When she is working, she likes to be high on cocaine; she usually has liquor in her purse. She also carries a supply of condoms and a switchblade for protection, since

she has been roughed up several times by tricks. On several occasions, she has engaged in group sex and "orgy parties".

Evette once worked briefly for a pimp. Because she was already streetwise, she says that she was not lured by his "sweet talk". After she left him, he continued to harass her. Finally, she reported him to a friendly police officer and her testimony and that of several other girls led to his conviction for living on the avails of prostitution.

Although she is friendly with a few policemen to whom she provides information about criminal activities occurring on the street, Evette generally has little respect for the police whom she says have verbally abused her. She has been charged several times. When she was interviewed, she was waiting for the date of a court hearing to be set in relation to charges for soliciting and drinking under age. Her record includes charges of: fraud, two break-and-enter offences, willful damage to public property and shoplifting.

Evette dropped out of school in Grade 7. She hopes to attend university. If she leaves the street, she feels that it will be her own decision, although this change would involve her learning to stop "taking the easy way out".

Case Study 5

The oldest of four girls, Pat now age 16, grew up in a government subsidized housing unit. Her father, who was in the army, was absent from home for long stretches of times. When he returned on brief visits, he spent his earnings to buy items for himself — alcohol, stereo equipment and a pornography collection. Pat is now fond of her mother, but she wasn't when she lived at home.

She was nine when her father first told her she was "sexy". She remembers the first night he assaulted her as the worst episode in her life. That evening, her father had been drinking heavily. When Pat resisted him, he tied her to a bed and raped her. Later, during his drinking binges, he regularly had intercourse with her. On these occasions, her mother was usually absent from home playing bingo. Pat told no one about these acts because her father beat her and because he also threatened to assault her younger sisters.

Pat's father also beat up her mother. Pat believes that her mother knew she was a victim of incest, but that she was too afraid of her husband to intervene. After Pat had run away from home several times and a neighbour had reported that she had been abused, the local child protection agency intervened. Her father was charged with incest and convicted, was imprisoned for a year, and following his release, returned to live with the family. Pat is unsure, but believes that her father has also sexually assaulted her younger sisters.

When she was 12, Pat began running away from home. On these occasions, she usually hitch-hiked with truckers who gave her a lift or a drink in exchange for having intercourse. Once when she had left home, she saw a television documentary on prostitution. She immediately decided that if she ever were to have enough money when she grew up, her only choice was to become a prostitute.

Pat became a transient when she was 14. Initially, she was harassed on the street by pimps who wanted her to work for them. A 22 year-old pimp began dating her; he soon convinced her to work for him, so that they could "get ahead together in life". He offered her protection from other pimps, a promise which never materialized, although her association with him made other pimps more cautious when they tried to procure her. Since then, Pat

has worked for two other pimps. Two of them have physically and sexually abused her. She loves her present pimp who has never hit her and who says he is going to marry her.

Working 10 hours a day, six days each week, Pat usually earns about $150 a day. She gives all of her earnings to her pimp. Calling herself "a player in his game", she helps to recruit other girls on the street to work for him. Except for the girls working for her pimp, she distrusts all other prostitutes on the street. At the request of her pimp, she has beaten up other girls whom he regards as "trouble makers". As a sideline to prostitution, she has also worked as a "scout" for deals involving drugs.

Pat usually performs only conventional sexual acts such as straight lays and hand jobs with tricks, usually in their cars. However, she has also done anal sex, around-the-world, spanking, and once sold her panties for money. Although she has worked full-time on the street for about two years, she feels that she is not a prostitute. To her, a prostitute is a "whore or a slut". She sees herself as being "a working girl trying to make a living".

This young hooker is well informed about the legal evidentiary requirements concerning prostitution. When she is working on the street, her demeanor is quiet and unobtrusive. She knows that she should not be seen to be a "nuisance". She has a friendly, informal relationship with the plain clothes police who patrol her area. Her only conviction is for theft under $200.

Pat says that her work as a prostitute has numbed her senses and left her feeling passive towards life. When she has sex with tricks, she frequently uses drugs to suppress her feelings and to cope with her pimp's demands. Some day, she wants to get a job as a cashier in a department store, but she is doing nothing to realize this ambition. She believes that Canadians should know what the real life of the prostitute working on the street entails.

Young Male Prostitutes

Case Study 6

Both of Marc's parents worked full-time when he was a child. His parents were divorced when he was 12 and he and his brother and sister were taken care of by his mother. Following her divorce, his mother became a heavy drinker. There were constant arguments at home. Two years ago when he was 13 years-old, he began running away from home.

Marc was age five when a family acquaintance had anal intercourse with him. When his father learned what had happened, he attacked the 16 year-old assailant, and as a result, he was charged by the police. Marc was eight when a neighbour who was a prostitute told him about life on the street. She predicted that someday, he too could become a hustler.

Bored with school, frustrated by arguments at home and seeking excitement, Marc started to visit the downtown streets when he was 13. He soon acquired a group of friends who introduced him to drugs. To pay for them, he began to turn tricks regularly the following year. By the time he was 15, his present age, he had left home and school and had become completely involved in the life of the street.

In his work as a hustler, Marc prefers sexual acts requiring the minimum of intimacy, but balances this concern by also engaging in those for which he

is best paid. Since he sees himself as being a straight hustler and a con artist, he receives but does not give oral sex. He says that only "gay hustlers" give oral or anal sex to tricks. By only receiving oral sex, he feels that he is retaining his autonomy by not becoming an active participant. Since he enjoys degrading tricks, he willingly performs acts of S & M and watersports. When he has the chance, he also steals his tricks' wallets.

Most of his tricks are middle-class males, married and living "in the closet". These clients want a quick and impersonal sexual exchange in which no extra touching or kissing occurs. Marc prefers these tricks to openly gay men whom he feels try to become too emotionally involved, who ask him to dinner, or who may want him to spend the night with them.

Marc has not been charged with soliciting. He has, however, appeared in juvenile court on charges of: assault, break-and-enter, theft and carrying a weapon. When he was interviewed, he said he would soon be appearing in adult court to face two counts of having indecently assaulted a female.

In addition to the money he earns as a hustler, Marc works part-time as an ice cream vendor. He also deals in drugs from which he makes a substantial profit. He sees the life on the street as one that is "disillusioning and causes you to lose the ability to be a caring human being". He feels that there should be more social workers reaching out to help street youths. "I'd like to be the Prime Minister. Then I'd create jobs so people like me wouldn't have to be degraded like this".

Case Study 7

After his mother's remarriage when he was an infant, Clarke and his sister grew up in a stern, religious atmosphere. His mother regularly attended church and he was physically punished if he did not pay attention to the services. Now 16, Clarke recalls that his stepfather regularly beat him. Each summer, Clarke and his sister were sent to camp or visited their natural father who was living with a prostitute. Because of tense relations between their natural parents, the children were even more severely punished on these visits than when they were at home.

By the time he was 12, Clarke had run away from home several times. He was taken into custody by a child protection agency, and subsequently, was in and out of several foster homes, group homes and detention centres. Now 16, his record includes: robbery; dealing in drugs; panhandling; stealing welfare cheques; and forging cheques.

This boy learned from other youths on the street that he could make "easy money" by turning tricks. Although at first he was disgusted by doing this, he learned that he could quickly augment his income by letting tricks suck his penis or having anal sex with them. When a trick is having oral sex with him, Clarke closes his eyes; he pretends that he is with a woman. He says that he only turns enough tricks to pay for his rent and his daily needs.

Clarke is under constant police surveillance, works with a group of hustlers, and believes that he can't leave the street. He wants to be a pimp so that he can "take it easy for a while".

Case Study 8

As infants, Stephen and his older sister were adopted by a well-to-do farming family. Now 17, Stephen recalls a happy childhood. Although he feels that his parents were too protective, he believes that they deeply loved

their children. He remembers having been called a "sissy" at school, an epithet he still resents. He grew up feeling isolated and rejected by his classmates.

When he was nine, Stephen's first sexual relationship was with an 11 year-old boy. They regularly engaged in oral sex, anal sex and mutual masturbation. Although he has never had intercourse with a girl, he says that he would "like to try it".

In order to be free to express his sexual feelings, Stephen ran away from home when he was 15. He believes that his parents never understood him. When he told his mother that he was "gay", the break with his family became permanent. He feels that there should be more understanding and tolerance by Canadians towards gays. After leaving home, he turned to the street; on several occasions, he has also lived briefly in youth hostels.

Stephen turned his first trick when he was 15. He had only been hustling for a few months when he was interviewed. He was then living in a youth centre which provided most of his basic needs. He uses the money he earns from prostitution to pay for drugs and having "a good time". Since there is no curfew at the youth centre, he usually works late each night. He meets his tricks in gay bars, bath houses and on the street.

Rarely spending more than 15 minutes with straight tricks, he averages three a night. He says that most of his straight tricks are older married men who have a "reputation to protect". Because they pay him well, he occasionally spends several days at a time with "gay tricks". Typically, he lets them suck his penis. If he can convince "gay tricks" that he is genuinely sexually aroused, they usually become regular customers. He prides himself on his ability to hold an erection and pretending to be sexually aroused.

Stephen has easy access to drugs and alcohol, which he uses daily. Because the police frequently patrol the street where he works, he is cautious about actively soliciting customers. He was once caught having oral sex with a customer who was later charged with gross indecency. Stemming from this incident, Stephen was sent briefly to a detention centre. His record includes convictions for the theft of a car and two break-and-enter offences.

Although he is content with his life on the street, Stephen hopes that someday he may "go straight", get married, raise a family and get a steady job. He is taking classes to upgrade his education.

Case Study 9

Following his birth to a single mother, Tom was placed in a foster home which he remembers as being loving and supportive. When he was nine, his natural mother and his new step-father regained custody for his care. They were then strangers to him. Tom says he felt that he had done "something wrong" and that he had been rejected by his foster parents whom he loved. It was at this point that "things began to go downhill". He remembers his childhood with his new parents as involving physical abuse and bouts of alcoholism.

One night when Tom was 10, his step-father who had been drinking, masturbated him. Tom felt guilty because he had been sexually aroused; he did not tell his mother about the incident. At first, he thought that only his step-father could stimulate "the feeling" in him. Later, when he was at school, he had "the feeling" aroused at different times by a male gym teacher, a librarian and a social worker. At school, he was constantly teased and humiliated about being gay.

When he was 12, Tom ran away from home, started taking drugs and was involved in a theft. He was placed in a number of treatment facilities and detention centres. Two years later, he met an adult gay male on the street. They became lovers and lived together for two years until Tom was ejected because he looked "too old". He had met several gay hustlers when he had lived with his lover and following the separation, he too began hustling.

Now 18 and experienced as a hustler, Tom's customers have included straight and gay tricks. Most of his tricks only pay to have oral sex performed in the back seat of a car. Others want violent and intense sexual acts. Once after he had been "fist-fucked" by a trick, he was hospitalized with a torn rectum and other injuries. Tom regularly performs a variety of S & M acts with tricks. He says it is common for tricks to show him pornography, either video tapes or magazines. He has been filmed several times at parties in private homes or hotel rooms while he performed various sexual acts.

Tom has been convicted several times on charges of shoplifting, but he has only once been cautioned for loitering. He has also been a suspect in a murder case; in this connection, he was detained in jail for several months where he was regularly sexually and physically assaulted by older inmates.

Because of his experience with "queer bashers", Tom wants to become politically active in the gay rights movement. He would like to be a counsellor in order to help boys to cope and accept their homosexuality and to avoid the type of life he has led working on the street.

Young Transvestite Prostitutes

Case Study 10

The youngest of 10 children, Paula grew up in a well-to-do family with both of her parents being professionals. Now 16, she feels that when she was a boy, she received little attention from them. The children were taken care of by a nanny and attended private schools.

When she was 10, her 20 year-old brother used to take her for rides in his car in order that they could sexually fondle each other. She does not feel that she was sexually abused by him. To escape the restrictive curfews imposed by her parents, Paula ran away when she was 14. She initially got a part-time job in a downtown restaurant where she met a transvestite who worked as a prostitute. To supplement her wages, Paula decided to start hustling on a part-time basis.

Now 16, Paula alternates between being a male and a female hustler. When she works as a female, she uses fewer drugs because she wishes to be in control of herself and because she feels there is more danger for females than for males working on the streets. Posing as a female, she usually has brief encounters with tricks performing oral sexual acts in the back seat of a car. Once, she was forced to have anal intercourse with a trick who hated "queers".

When Paula works as a male hustler, her tricks often take her to dinner or to parties. On several occasions, she has lived with tricks for short periods of time. Paula says that she makes better money working as a male than as a female hustler. She will do "just about anything" for a trick, except to let herself be physically beaten. She has been paid to urinate on a trick, defecate in a trick's mouth, stick pins in a trick's nipples, have group sex, and once, she "fist-fucked" a customer.

Paula has been charged once for loitering, but the case was dismissed in court. On another occasion, she was charged for gross indecency after she had been caught having oral sex with a trick. She feels that the police are out to get her and that they constantly harass her. She visits her parents regularly to collect an allowance which they still give her. Sometimes, she has gone home dressed as a woman. Her parents, she says, feel "it is a stage she has to go through". With their help, she hopes someday to become a designer.

Case Study 11

The youngest of several boys, Theresa remembers that when she was growing up, relatives and strangers used to tell her that if she had been a girl, she would have been "cute". Her parents, both professionals, gave her everything she needed, although her relationship with them was never warm or affectionate.

One night when she was eight, her 15 year-old brother sucked her penis. She feels that what they did was just two kids experimenting with each other. Two or three years later, she began using soft drugs obtained at school. Wanting hard drugs and to explore her sexual feelings, she ran away from home several times between the ages of 13 and 15. Street life, she found, satisfied these needs.

After leaving home, Theresa felt happier when she was dressed as a woman. She joined a group of transvestites working on the street. She turned her first trick when she was 15. When she was interviewed, prostitution was the sole source of her income. She relies heavily on hard drugs. Since she is usually "coming down from drugs" taken at night, she seldom leaves her apartment during the day.

Theresa prefers to work as a female hustler. She usually takes tricks to her apartment to perform routine sexual acts. Although she does more time-consuming acts like giving a strip show and beating or kicking a trick, she performs these acts elsewhere. She has only once been assaulted when dressed as a woman. That incident involved a trick who pulled a knife on her and stole her purse.

Although she feels she is more vulnerable when she is dressed as a female than when she is dressed as a male, she says that she only works on the street as a male when she is too lazy to put on makeup. She has had few contacts with the police, and with one exception, most have been casual. She tries to stay out of their way. Once, after nodding to a driver, she got by mistake into an unmarked patrol car. She was charged with soliciting, but the case was later dismissed.

Theresa believes that the police should not have the right to investigate her street activities. Since she feels that she is providing a necessary service, she says that she should be allowed to do her work without being harassed. Now 17, Theresa rarely visits her family. She believes that although her parents do not know she is a transvestite working as a prostitute, they suspect that she is gay. In the future, she wants to have complete change of sex so she can become a transsexual and to be trained as a legal secretary.

Case Study 12

One of three children, Caron grew up in a middle class suburb on the outskirts of a large city. She says her parents have always been happily married; she recalls no major disputes during her childhood. Once in a while, after her father had drunk too much, he physically abused her, but Caron remembers these episodes as being "nothing out of the ordinary".

When she was five, a 14 year-old male neighbour sucked her penis and asked her to do the same to him. The children regularly did this until Caron accidently told her mother what they were doing. The acts were stopped after her mother confronted the boy's parents. Caron says that at the time, she enjoyed the experience, but now she feels that she had been sexually abused.

By age seven, Caron began to dress secretly in female clothing. Several years later, her mother thought she was gay because of her effeminate manners. As a result, Caron received psychiatric counselling. Both the physicians and her parents then realized that Caron saw herself as a female trapped in a male body.

Caron dropped out of school at the end of Grade 10. She began to hang around downtown streets where she found excitement and was accepted. She went to "drag clubs" featuring female impersonators, and soon met a number of transvestites, several of whom were prostitutes. Her new friends introduced her to hard drugs, and to pay for them, she began to turn tricks when she was 16. About two years later when she was interviewed, she saw herself as a woman earning her livelihood as a prostitute.

Caron works on the street near the area frequented by female prostitutes. For protection, she usually works with another transvestite or with a female prostitute. She alerts potential customers that she is available by wearing flamboyant clothing, by walking aimlessly, and by a nod of her head. She says that she never harasses tricks. If they reject her offer, she walks away.

Most of her customers think that she is a woman. She usually only performs oral sex, "hand jobs", and the less violent types of S & M acts. After she has been paid, in order to have the fun of seeing a trick's reactions, she sometimes lets him know that she is a male. A few of her regular customers know her gender. They pay her well to urinate on them, perform hard core S & M acts, or let them take pictures of her.

Being a prostitute, Caron says, is like playing a game of "hide-and-seek". She avoids the police as much as she can. She has only once been charged with loitering, but the charge was dismissed. She has spent time in jail for having robbed a trick of an expensive watch.

Because she feels that too many youths are becoming prostitutes, Caron feels that something should be done to keep children at home. She is receiving hormones to help her develop secondary female sex characteristics and would like to have a sex change operation. In the future, she would like to be a model or dancer. If she could live her life over again, she says she would still decide to work on the street, since nowhere else has she been so completely accepted by other persons.

Length of Time Active as Prostitutes

The findings concerning the lengths of time that the youths had been active as prostitutes correspond to those concerning how old they were when they had turned their first trick. About a third (35.4 per cent) had been active for a year or less.

Information was not reported for 11 youths concerning how long they had been prostitutes. For the remainder, the average was 2.8 years (2.5 years,

males; and 3.0 years, females). One in eight males (11.9 per cent) and one in seven females (13.8 per cent) had been actively working on the street for five or more years.

Number of Years Active as a Prostitute	Males		Females	
	Number	Per Cent	Number	Per Cent
1 year or less	26	31.0	55	37.9
2 years	19	22.6	24	16.6
3 years	16	19.0	21	14.5
4 years	11	13.1	16	11.0
5 years	4	4.8	8	5.5
6 years	1	1.2	5	3.4
7 years	2	2.4	3	2.1
8 years	2	2.4	3	2.1
9 years	1	1.2	1	0.7
Not reported	2	2.4	9	6.2
TOTAL	84	100.1*	145	100.0

* Rounding error

Summary

1. By age 13, fewer than half of the youths had had any knowledge of prostitution. By age 16, four in five (81.2 per cent) had known about prostitution.
2. The most commonly cited sources of learning about prostitution were the media (25.3 per cent) and friends or acquaintances (27.5 per cent).
3. Prior to working on the street, about two in three youths (65.9 per cent) had known at least one prostitute. About one in six girls (17.6 per cent) had likely been induced to become a prostitute by a pimp.
4. About half of the juvenile prostitutes (47.5 per cent) had turned their first trick when they were 15 years-old or younger.
5. The principal reason (70.3 per cent) why these youths said that they had become prostitutes was because it afforded them the opportunity for rapid financial gain.
6. Most of these youths had not been threatened or forced to become prostitutes. Only one in nine (11.4 per cent) had been forced to engage in prostitution against his or her will.
7. About a third (35.4 per cent) had been active as prostitutes for a year or less. The average length of time spent in working the street was 2.8 years.

While the early experiences of these youths were diverse, several trends clearly emerge concerning their transition from an unhappy family background to working as prostitutes on the street. While most had sought to escape from their families, few had been able to provide for themselves adequately in a practical or socially acceptable way, or to shoulder the burden that they had suddenly assumed of caring for themselves. At the same time that they had found themselves in this vulnerable position, many had learned about prostitution for the first time, were coming into personal contact with prostitutes, and were entering into the milieu in which it thrives and is accepted as an ordinary fact of life.

These contacts made prostitution appear to represent not only a viable, but an exciting and desirable means of earning a livelihood, especially since the financial rewards associated with such a lifestyle were immediate, attractive and appeared to involve minimal risks. When these experiences are considered in conjunction with accompanying factors such as drugs and alcohol, the influence of pimps, an ordinary adolescent desire to explore one's sexuality and their inability to find other forms of employment, it is evident that many of these youths found it easy to drift into prostitution.

Chapter 45

Working on the Street

In this chapter, the ingrained pattern of exploitation, disease and violence in the daily lives of juvenile prostitutes is clearly documented. Drawing upon the findings of the National Juvenile Prostitution Survey, the work of these youths is described in relation to the amount of time spent as prostitutes, their soliciting practices, the sex acts performed and their payment for these, the risks that they face with respect to disease and to being threatened and attacked, and their encounters with the police and the courts.

The findings leave no doubt about the tragic consequences of a life of prostitution for these young persons and of the urgent need to afford them better assistance, to deter them from pursuing this career and to punish those persons who exploit them as customers and as pimps.

Other Types of Work

After they left home, none of the juvenile prostitutes had held full-time jobs; only a few had obtained some form of part-time work. Their work status had remained essentially at this level during the interim. When they were interviewed, only one in 20 (4.8 per cent) held a full-time job and about one in 11 (8.7 per cent) was working on a part-time basis. Most of these youths either had no other type of work than prostitution or regarded prostitution as their full-time job.

Six males (7.1 per cent) and five females (3.4 per cent) claimed to be working full-time at an occupation other than prostitution, while 16 males (19.0 per cent) and four females (2.8 per cent) stated that they had part-time jobs. In contrast, 46 boys (54.8 per cent) and 91 girls (62.8 per cent) said that they were unemployed, while six boys (7.1 per cent) and 23 girls (15.9 per cent) stated that they had never sought employment other than prostitution and one male and three females indicated that they had been laid off from their regular jobs. Seven males (8.3 per cent) and 16 females (11.0 per cent) reported that they were students (it is unknown how many of the youths who stated that they were students were involved in part-time study or correspondence school programs, and also might safely be considered unemployed).

At least 53 males (63.1 per cent) and 117 females (80.7 per cent) had no form of employment other than prostitution. Of the youths who said that they had some type of employment, most of them held low-paying positions, working as waiters, cashiers, ice cream vendors, restaurant kitchen helpers, handymen, landscapers and housekeepers.

Working Hours

About two in five youths (males, 40.5 per cent; females, 38.6 per cent) said that they regarded working the street as a full-time job, while 17 males (20.2 per cent) and 35 females (24.1 per cent) said that they thought of prostitution as a part-time job. Fewer than one in three (males, 31.0 per cent; females, 31.0 per cent) claimed that they worked on the street on an occasional basis when they required money; one boy and two girls alleged that their only experience with prostitution was a single occurrence.

Most of these youths worked as prostitutes on a year-round basis: 59 boys (70.2 per cent) and 107 girls (73.8 per cent) stated that they worked on the streets during all seasons of the year. A dozen males (14.3 per cent) and 10 females (6.9 per cent) said that they worked during every season except winter, while five males (6.0 per cent) and 15 females (10.3 per cent) said that they worked only during one season.

About two in three youths (males, 63.1 per cent; females, 64.8 per cent) reported working as prostitutes at least four days each week; 24 boys (28.6 per cent) and 27 girls (18.6 per cent) said that they worked seven days a week as prostitutes. Forty-six males (54.8 per cent) and 79 females (54.5 per cent) stated that they worked an average of five hours or more each day, while 17 males (20.2 per cent) and 25 females (17.2 per cent) reported working eight hours each day. A few youths stated that, when working, they spent 12 or more hours on the street. Most of the youths (males, 77.4 per cent; females, 71.0 per cent) stated that they worked four weeks each month. These findings indicate that many of these youths devoted a substantial part of their time to working as prostitutes.

Soliciting Tricks

When asked where they worked, most of the youths identified specific areas in the downtown cores of their cities (often a particular intersection was mentioned). In certain cities having ports, waterfront and dock areas were also mentioned by some young prostitutes. In some cities, areas were identified that are frequented only by male prostitutes, or only by females. This separation of sites reflects the fact that the sexual preferences of tricks who patronize female prostitutes differ from those of customers to whom male prostitutes sell their sexual services. In the cities where this occurs, the fact that only young male

prostitutes are found in certain areas makes it easier for the hustlers' predominantly male homosexual clientele to find and "shop" for youths whom they find attractive and who are prepared to offer them sexual gratification.

The respondents were asked where they contacted tricks. Numerous locations were reported, since, at different times, some of them used a variety of locales for meeting and negotiating with tricks. However, since the National Juvenile Prostitution Survey obtained information primarily from youths who were working on the streets, it is not surprising that the bulk of their business was carried on at the street level: 80 males (95.2 per cent) and 133 females (91.7 per cent) stated that they contacted their customers on the street. The second most favoured site was to contact tricks in bars: 38 males (45.2 per cent) and 67 females (46.2 per cent). Other places used by juvenile prostitutes to meet and negotiate business with tricks included: hotel lobbies, restaurants, theatres, docks, ship yards, bus stops and downtown malls. A few youths said that, on occasion, they telephoned tricks for whom they had previously worked.

The means used by the youths to let prospective customers know that their services were available are listed in Table 45.1 (since most of the youths had

Table 45.1

Methods Used by Juvenile Prostitutes to Notify Tricks that Their Services were Available

Methods Used to Attract Tricks	Males (n=84)		Females (n=145)	
	Number	Non-Accum. %	Number	Non-Accum. %
Being on the street in an area well known for prostitution	73	86.9	110	75.9
Standing on a corner	37	44.0	60	41.4
Slowly walking around the block	39	46.4	58	40.0
Assuming a seductive pose	27	32.1	18	12.4
Eye contact	60	71.4	86	59.3
A verbal come-on	27	32.1	32	22.1
Smiling	55	65.5	83	57.2
Sitting in bar/restaurant/hotel lobby	16	19.0	29	20.0
Verbally informing trick of availability	16	19.0	24	16.6
Nods	—	—	6	4.1
Other	10	11.9	11	7.6

National Juvenile Prostitution Survey.

several ways of informing clients of their availability, multiple responses were recorded). The most popular methods of conveying this information were relatively unobtrusive means requiring little or no verbal contact and no initial communication of an overtly sexual nature.

Many of the youths (males, 69.0 per cent; females, 55.2 per cent) said that they dressed casually when they were working. A few said that they usually dressed up (males, 11.9 per cent; females, 15.9 per cent), while nine males (10.7 per cent) and 35 females (24.1 per cent) stated that, at different times, they dressed either formally or casually while they were soliciting. Two males wore clothes coded to indicate that they were willing to perform sado-masochistic acts. Another two males wore clothes designed to make them look as young as possible in order to enhance their marketability; three other males dressed in drag (i.e., feminine attire). The working outfits used by two girls consisted of anything that would make them stand out sharply from the crowd.

Of relevance from a legal perspective were the means that they used to negotiate their transactions with prospective tricks. The survey's questions focussed on whether their usual conduct when they were working on the street could be described as "pressing and persistent", and hence, whether they routinely behaved in a manner that would render them liable for the offence of soliciting for the purposes of prostitution.

Of the 229 youths, only eight males (9.5 per cent) and eight females (5.5 per cent) said that they typically initiated contact with tricks by approaching them; for 37 males (44.0 per cent) and 72 females (49.7 per cent), their business encounters generally began with tricks approaching them. A further 39 males (46.4 per cent) and 61 females (42.1 per cent) said that both they and the tricks approached each other. One girl said that the usual procedure of her tricks was to approach her pimp, while another stated that her tricks generally contacted her by telephone. Thirty-five males (41.7 per cent) and 43 females (29.7 per cent) stated that they usually spoke first to the trick, while 26 boys (31.0 per cent) and 49 girls (33.8 per cent) stated that their tricks generally started the conversation. Another 23 males (27.4 per cent) and 50 females (34.5 per cent) said that, on different occasions, either party to the transaction began speaking first.

These conservations typically began with an inoccuous comment, such as: "Are you working"; "Do you want to go out"; "Do you want to go for a drive"; "Do you want to go for a drink"; or "Do you want some company?" Most of the youths, both male and female, claimed that they did not persistently attempt to force themselves on prospective tricks; 59 males (70.2 per cent) and 130 females (89.7 per cent) said that they have never approached a trick more than once or harassed him to accept their services. Substantially more of the juvenile male prostitutes (28.6 per cent) than the female juvenile prostitutes (9.0 per cent) said that they had ever made repeated approaches to a trick. Their reasons for not pressing tricks or persisting with them are listed in Table 45.2.

Table 45.2

Juvenile Prostitutes' Reasons For Not Making Repeated or Harassing Advances to Prospective Tricks

Reasons Given for Not Harassing Tricks	Males		Females	
	Number	Per Cent	Number	Per Cent
There are many more tricks to choose from	19	22.6	57	39.3
Trick may become verbally abusive	1	1.2	3	2.1
To approach a trick more than once constitutes soliciting	3	3.6	10	6.9
To approach a trick more than once is contrary to the street code	3	3.6	1	0.7
Youth too proud to make repeated advances	12	14.3	14	9.7
Youth not interested in making repeated advances	7	8.3	17	11.7
Not the youth's style to make repeated advances	3	3.6	5	3.4
The tricks approach the youth	1	1.2	—	—
Making repeated advances is a waste of time	5	5.9	3	2.1
Youth never had a trick say "no"	2	2.4	2	1.4
Most tricks who are regulars do not like to be bothered	—	—	1	0.7
Other reasons	3	3.6	7	4.8
Response missing	25	29.8	25	17.2
TOTAL	84	100.1*	145	100.0

National Juvenile Prostitution Survey.

The juvenile prostitutes were asked what they did if a trick refused the offer of their sexual services. Multiple replies were given. The majority said that under such circumstances their conduct would be neither pressing nor persistent. Three in four stated that they would simply walk away (males, 76.2 per cent; females, 73.1 per cent); 34 boys (40.5 per cent) and 62 girls (42.8 per cent) said that they would go on to the next trick. Thirteen boys (15.5 per cent) and eight girls (5.5 per cent) said they would laugh, nine males (10.7 per cent) and 13 females (9.0 per cent) indicated that they would try to change the trick's mind, and nine males and eight females reported that they would repeat their offer. Nine males and nine females said that in such a situation, they would lower their asking price. Only a few said that they would then become more aggressive: one boy and one girl each said that they would be insistent with the trick; one male said he would follow the trick; two said they would grab the trick by the arm; and one said he would grab some other part of the trick's body. Three males and one female said that they would verbally abuse a trick who refused their offer.

Less than half of the juvenile prostitutes (males, 44.0 per cent; females, 49.7 per cent) said that, at some time, they had approached and propositioned a "straight john", that is, a person who was not seeking the services of a prostitute. Of the youths who had propositioned a non-trick, 13 boys (35.1 per cent) and 41 girls (56.9 per cent) said that, upon realizing their mistake, they had simply backed off; another 16 males (43.2 per cent) and 22 females (30.6 per cent) had apologized. One male and two females had continued to bother the straight john, hoping that he might change his mind. Two males had told the non-trick that he had come into an area frequented by prostitutes. One male had followed a straight john; another had left the area in case the person whom he had propositioned might have decided to report him; and a third boy had been beaten by the straight john. One girl said that she simply laughed when she discovered her error, one asked the person for the time, and another girl pretended that she had been hitchhiking. One girl said that the straight john had given her five dollars and had told her to go home.

The juvenile prostitutes were asked if they had ever seen tricks approach women who were not prostitutes. Almost two-thirds (63.8 per cent) said that they had seen women propositioned in this fashion; 27 males (32.1 per cent) and 46 females (31.7 per cent) said that they had never observed an incident of this kind. Those who had seen a trick proposition a non-prostitute were asked to recount the reactions of both the women and the tricks. The reported reactions of these women who had been importuned ranged from insult and disgust, shock and upset, to fear, anger, and in a few instances, minor acts of violence. The youths most often reported seeing the tricks react with embarrassment and apologies; in other instances, the tricks were in cars and drove off quickly. In a few cases, the tricks verbally abused the women, persisted in their solicitations, or even followed and grabbed at the women who were not hookers.

The Committee's findings from the National Juvenile Prostitution Survey clearly indicate that most of these youths did not typically engage in conduct

that meets the legal requirements of the offence of soliciting for the purposes of prostitution. Most of these youths were able to advertise their availability without having to resort to obtrusive or importuning advances. They communicated the fact that they were working on the street by their dress and by means of gestures, mannerisms or poses. Often, it was unnecessary for them to approach clients, since the tricks frequently sought them out and propositioned them.

As a rule, the juvenile prostitutes did not attempt to persuade unwilling or undecided passers-by to make use of their services. Instead, their aim was to make themselves available to persons who were already "in the market" for a paid sexual encounter. Similarly, the youths' initial conversations with prospective tricks were usually innocuous, and not pressing, insistent or overtly and offensively sexual. When they mistakenly approached a person who was not interested in paying money for sex, or one who rejected the offer of their services, most were content to back off, rather than persisting in an effort to "sell" the non-trick. As noted later in this chapter, only a few of these juvenile prostitutes had ever been charged with soliciting. In this regard, the survey's findings clearly indicate that the existing offence of soliciting (section 195.1 of the *Code*) is of negligible utility in controlling juvenile street prostitution.

Where Tricks Were Turned

When a trick approached them in a vehicle, more of the boys (57.1 per cent) than the girls (41.4 per cent) said that it was their usual practice to get into the car before negotiating with him. This technique has the advantage of making it more difficult for the trick to reject the youth's terms. Fourteen males (16.7 per cent) and 52 females (35.9 per cent) stated that they entered the trick's car after negotiating with him, and 15 boys (17.9 per cent) and 22 girls (15.2 per cent) indicated that they usually got into the vehicle during the negotiations. Another six males and two females stated that the moment at which they entered the car depended upon their assessment of the trick.

The places most often identified by the youths where they generally performed sex acts with their tricks were the tricks' vehicles, hotel or motel rooms, and apartments.

Principal Locations Where Sexual Acts were Performed	Males (n=84)	Females (n=145)
	Non-Accum. %	Non-Accum. %
Trick's car	65.5	73.8
Hotel, motel rooms	57.1	69.0
Prostitute's own room, apartment	17.9	14.5
Someone else's room, apartment	72.6	11.0

The 'other' places mentioned included: rented rooms, public parks, a schoolyard, a cemetery, steam baths and the trick's place of employment. The youths were asked what parking location was usually selected when they turned a trick in a car. Multiple replies were given. About a third (males, 32.1 per cent; females, 32.4 per cent) stated that their tricks usually parked in an underground parking lot or a garage; 29 males (34.5 per cent) and 42 females (29.0 per cent) stated that a public parking lot was used. Twenty-three boys (27.4 per cent) and 36 girls (24.8 per cent) said that the place chosen was generally a street (usually on the dark side). Ten males (11.9 per cent) and 24 females (16.6 per cent) stated that the usual parking location was on the waterfront, while 12 boys (14.3 per cent) and 24 girls (16.6 per cent) said that a beach area was used. Other parking places mentioned by the youths included: laneways; cemeteries; the back of a school yard or factory; public parks; construction sights; a company parking lot; and a "high class" residential area.

The numerous locations where the young hustlers and their tricks performed sexual acts clearly indicates that a mere tinkering with legal provisions intended only to control the occurrence of these activities in public places would do little to resolve the basic dimensions of the problem of juvenile prostitution. Juvenile prostitutes are already accustomed to using a wide assortment of locations other than vehicles. The effects of legislative amendments focussing primarily upon the control of the public manifestations of these activities might serve the narrow purpose of "clearing the streets", but their enactment would likely achieve little more than having the effect of displacing or diverting most or all of these activities to being performed in out-of-sight private locations. In the instance of juvenile prostitutes, such a shift in locale would not likely dissuade them from continuing in this line of work, would make their detection by enforcement authorities more difficult, and would increase the opportunities for their control and exploitation by pimps.

These findings and others obtained in the National Juvenile Prostitution Survey leave no doubt in the Committee's judgment that the resolution of the problem of juvenile prostitution can only be achieved effectively by means of co-ordinated and rational social and legal policies that fully account for its multi-faceted aspects. Partial measures, acted upon separately, could well have the effect of inadvertently entrenching the problem and of heightening the risks of violence and exploitation already experienced by these youths. The Committee's recommendations concerning juvenile prostitution given in Chapter 3 of the Report seek to establish a framework upon which such co-ordinated social and penal policies could be developed and implemented by government and non-government agencies.

Sexual Acts Performed

The youths were asked how they knew what sex acts their tricks wanted them to perform. Half of the males (50.0 per cent) and almost two-thirds of the females (64.8 per cent) stated that the trick simply told them. Another 20

males (23.8 per cent) and 26 females (17.9 per cent) stated that they asked the trick, while two males and six females said that either the trick told them or they asked him what he wanted. Fourteen males (16.7 per cent) and 13 females (9.0 per cent) said that they recited a list of acts that they were willing to perform and then the trick selected the sexual act that he wanted. Four boys and one girl indicated that the usual procedure was for the trick to ask what acts they did best. In addition, one male and one female each stated that no one act was specified beforehand, but that they simply agreed to have sex with the trick. Another female said that her pimp arranged the details with the trick beforehand and then notified her.

In establishing the price for the various sexual acts which they were prepared to perform, it appears that, while the majority of the youths claimed to have established a fee schedule for the various acts that they performed, like some other workers operating on this form of remuneration, many did not stick inflexibly to these predetermined prices. Rather, many were willing to vary or negotiate their prices depending on a number of factors, including the trick himself and the nature of the supply and demand for their sexual services relative to local market conditions.

Table 45.3

Setting the Price Charged by Juvenile Prostitutes for Sexual Acts

Factor Affecting the Price Charged	Males (n=84)		Females (n=145)	
	Number	Non-Accum. %	Number	Non-Accum. %
Prostitute has set price for various acts	52	61.9	98	67.6
Price is open for negotiation	35	41.7	37	25.5
Price varies for each trick	26	31.0	26	17.9
Prostitute offers discount to regular clients	11	13.1	9	6.2
Price depends on the going rate in the area	31	36.9	49	33.8
Price depends on prostitute's financial needs for that day (meeting the quota set by a pimp, drugs, food, bills)	15	17.9	16	11.0
Prostitute doesn't charge a fee, but is supported in return for performing sexual acts	—	—	3	2.1

National Juvenile Prostitution Survey.

The most frequently requested sexual act was a "blowjob" (i.e., the trick being fellated by the youth); 54 males (64.3 per cent) and 74 females (51.0 per cent) said that more tricks asked them for this than for any other sexual act. Ten males (11.9 per cent) said that they were most often asked to receive fellatio from their tricks, while seven boys said that their customers most frequently wanted them to give and receive a "blowjob". Four males stated that anal sex was most often requested. One male said that his tricks most often wanted a "hand job", while another boy specified "69" as the most popularly requested sexual act. Four males and 31 females (21.4 per cent) said that a "straight lay" was the act which was most frequently asked for by their customers. Four girls said that the most popular request was for a "straight lay" and a "blowjob", while another six girls said that they were most often asked to give "half-and-half". Two boys and two girls stated that they most frequently were requested to perform acts of "S & M" or "B & D" on their tricks. Another girl stated that she was most often asked to give a "straight lay" and also to be the recipient of anal sex, while two others said that "around the world" was most frequently requested. One boy and 22 girls (15.7 per cent) stated that no one act was asked for more than others.

Few of these youths had emotionally intimate or caring exchanges with their tricks. Of the 179 youths (59 males and 120 females) who reported the typical duration of these encounters, 33 males (55.9 per cent) and 104 females (86.7 per cent) stated that each trick received 30 minutes or less of their time. Over one in six males (15.3 per cent) and almost two in five females (37.5 per cent) said that they usually spent 15 minutes or less with each trick. Only 20 of the 59 boys (33.9 per cent) and 10 of the 120 girls (8.3 per cent) said that they spent more than an hour with each trick.

As an alternate response, 10 males (11.9 per cent) and 14 females (9.7 per cent) said that the length of time taken depended upon the nature of the act that the trick wished them to perform, while 15 boys (17.9 per cent) and nine girls (6.2 per cent) stated that the duration of the sexual encounter varied with each trick. Two males and two females said that how much they were paid determined the amount of time that they spent with a trick. Another three females said that they spent as little time as possible with each trick.

When the juvenile prostitutes were asked what they thought about when they had sex with a trick, about a third (males, 32.1 per cent; females, 38.6 per cent) said that their primary interest was in "getting it over with as soon as possible". Another 18 boys (21.4 per cent) and 38 girls (26.2 per cent) said that they thought about anything else except what they were doing, while 19 males (22.6 per cent) but only 10 females (6.9 per cent) said that they liked to think that they were having sex with another partner. Fourteen males (16.7 per cent) and 21 females (14.5 per cent) said that they only thought about the money that they were earning, and four boys and 17 girls (11.7 per cent) stated that they repressed thoughts about "how disgusting the whole scene is" or felt afraid, guilty or hated their tricks for what they were doing to them.

In light of the survey's findings, it is evident that the sexual acts which the juvenile prostitutes performed with their tricks afforded them neither much physical nor emotional gratification. The encounters were generally of brief duration and consisted of little more than the performance of the sexual act itself and the payment for the services rendered. The youths' responses suggest that, to the extent that it was feasible, most of them detached themselves emotionally from the acts in which they engaged and that they sought, particularly in the case of the girls, to avoid any personal involvement with their customers. Most of these youths deliberately attempted to separate their feelings and thoughts from their bodies: while the trick was being "turned", their thoughts were disengaged and they merely sought to "go through the motions" with their bodies. The majority of the boys and girls who participated in the survey found their work as prostitutes so unpleasant that they sought to detach themselves from it as a means of escape. The stereotyped images of the glamorous prostitute who thoroughly enjoys this line of work are not supported by these findings.

Over four in five young prostitutes indicated that there were certain sexual acts that they were unwilling to perform: 71 males (84.5 per cent) and 126 females (86.9 per cent) identified at least one act in which they would not engage, while 60 males (71.4 per cent) and 111 females (76.6 per cent) named a second such act. Among the youths who listed at least one act, 36 males (42.9 per cent) and 95 females (65.5 per cent) said that they would not receive anal intercourse. Three boys and five girls would not give a trick a "straight lay", while another 20 males (23.8 per cent) and eight females were unwilling to have acts of "S & M" or "B & D" performed on them. A further four boys and 11 girls said that they would not perform oral sex on a trick. Of the boys, two were not prepared to "fist-fuck" their tricks, one would not engage in "half-and-half" and one was unwilling to lick or suck a trick's anal area. Two males and four females said that they would not show a trick affection or kiss him and one male and one female would not be the recipient of any act performed by a trick (i.e., would not take a passive role). One boy and two girls said that they would neither perform, nor be the recipient of, an act of "spatting".

Of the youths who named a second act that they were unwilling to perform, 26 males (31.0 per cent) and 54 females (37.2 per cent) stated that they would also not urinate on a trick or allow a trick to urinate on them (i.e., to perform or receive "watersports"). Two males and one female said they were unwilling to receive oral sex from a trick, while 11 boys (13.1 per cent) and 35 girls (24.1 per cent) would not perform "around the world" on a trick. Five males and six females would not permit a trick to "fist-fuck" them. A further eight boys and seven girls said that they would be unwilling to have acts of "S & M" or "B & D" performed on them, while one male would not perform any such act on a trick. Six males and two females stated that they would not allow anal intercourse to be performed upon them; another girl specified "half-and-half" as the second sexual act that she was unwilling to perform. One male and four females indicated their unwillingness to involve themselves in any form of bestiality.

The reasons most frequently cited by the youths for their unwillingness to perform certain sexual acts were that: the acts were unappealing or disgusting; the acts were painful; the youths were not interested in performing acts that they regarded as being "kinky"; they considered the acts to be too intimate and were unwilling to perform them with anyone except their lovers; and the acts were degrading and made them feel inferior.

Their refusal to engage in certain types of sexual acts reflects their capacity to rationalize about their activities as prostitutes. Many of these youths had developed a personal code which clearly delineated between those activities which they were and were not prepared to do. As long as they adhered to this personal code, they felt they were able to persuade themselves either that they had not sunk to the lowest possible level of self-degradation or that they had not become "sluts" or "whores". By adhering to such a code, a youth was able to persuade himself or herself that someone who performed "kinky", "disgusting" or "degrading" acts was contemptible, while a prostitute who only engaged in the more conventional sexual acts for money could retain some vestiges of self-respect. Similarly, several youths had rationalized that, if they were to perform "intimate" acts with their tricks, or became personally involved in such acts, then they would be truly selling themselves, and hence, would be "sluts" and "whores".

These youths sought to convince themselves that, by performing only those acts with their tricks that permitted them to remain emotionally detached, they managed to retain a wholesome part of themselves that was unsullied by their work. This "unaffected" part of their lives was reserved for the truly intimate relations that they had with their lovers (in the case of females, these "lovers" were often their pimps). By thinking of their pimps as boyfriends or lovers, many female juvenile prostitutes sought to rationalize that they were different from girls who worked for pimps. Likewise, many young prostitutes had developed their personal codes as a means of self-protection in order to persuade themselves that they were different, and in some way less debased, than juvenile hustlers who would "do anything for money".

Payment for Services Rendered

The youths were asked the prices that they usually charged for each of the following sexual acts: "straight lay", "blowjob", "half-and-half", "around the world", anal sex and miscellaneous sexual acts (these included receiving oral sex from a trick, giving the trick a "handjob", providing the trick with company, conversation and cuddling for the evening, performing anal sex on the trick, engaging in a threesome, stripping while the trick masturbated and performing acts of "S & M" and "B & D" on the trick). The prices quoted ranged from as little as $20 for what they regarded as conventional acts, such as "straight lays" and "blowjobs", to as much as $300 for more exotic acts. Typically, however, the youths reported charging between $40 and $100 for engag-

ing in most of the sexual acts listed. Other acts that some stated that they had performed included:

- Youth fistfucked the trick;
- Youth performed watersports on the trick;
- Trick purchased underwear from the girl;
- Fetishes acted out: feet, breasts caressed and kissed;
- Youth gave the trick an enema;
- Trick took nude photographs of the youth and thereby became aroused;
- Transvestite trick put on the female prostitute's clothes while she watched;
- Trick had the prostitute shave her pubic area and put on children's clothes before engaging in a straight lay;
- Youth masturbated, while trick watched;
- Male prostitute received anal intercourse while dressed in drag;
- Youth performed spatting on the trick.

One boy said that he would fistfuck a regular customer without asking for more money after having received payment for engaging in anal intercourse. Four males and one female charged their tricks an extra fee for spending the night with them. Another boy had been paid for acting as an escort, sometimes for days at a time. Two girls sometimes performed in "stag shows" (i.e., live sex performances) and charged according to the number of persons who were in the audience. One girl had performed sexual acts in exchange for having her living expenses paid. Two boys and one girl were sometimes paid on an hourly basis for posing in the nude. Three girls were occasionally willing to perform sexual acts if they received payment in alcohol or drugs. One male was willing to allow tricks to perform watersports on him, provided that in addition to his regular fee, he received a new set of clothes.

Almost three in five males (59.5 per cent) and more than nine in 10 females (91.7 per cent) said that it was their standard procedure to be paid before they engaged in sexual acts with tricks. Twenty-two males (26.2 per cent) but only five females were customarily paid after performing the sexual act. Eight males and one female stated that the time of payment depended on whether the trick was a regular customer whom they trusted would pay them later. A further three males usually received half of their fee before and the balance after the sexual act, while one male and three females were paid by means of an ongoing support arrangement. One girl said that, in lieu of money, she received drugs and alcohol during her sexual encounter with the trick, and another two girls typically never received money because their tricks had always made arrangements directly with their pimps.

The average daily earnings from working on the street indicate that juvenile prostitution can be a lucrative career for these youths who typically have dropped out of school early and who have had little in the way of conventional work experience. Nine male prostitutes but only one female prostitute reported

that their daily gross earnings were less than $50. Information concerning the daily gross earnings was not reported for 16 juvenile prostitutes. The average daily gross earnings of about nine in 10 juvenile prostitutes (203 youths or 88.6 per cent in the survey) were:

Juvenile male prostitutes	$ 140.85
Juvenile female prostitutes	$ 215.49
Average, both sexes	$ 189.38

The earnings of boys were generally lower than those of girls. This difference is accounted for because the number of tricks that a male juvenile prostitute can turn in a day, and hence his earnings, are limited by the number of successive times that he is able to achieve an erection. Despite their potential earning capacity, most of the youths were not financially secure, but tended to live from day to day. This fact attests to their lack of conventional occupational skills, their tendency to spend impulsively, their inability to manage money, and in the case of the females, to the destructive influence of and exploitation by pimps (Chapter 46).

Table 45.4

Juvenile Prostitutes' Average Daily Earnings from Working as Prostitutes

Daily Earnings ($)	Males		Females	
	Number	Per Cent	Number	Per Cent
Under 50	9	10.7	1	0.7
50	6	7.1	3	2.1
55	1	1.2	1	0.7
60	7	8.3	1	0.7
70	1	1.2	1	0.7
75	2	2.4	1	0.7
80	3	3.6	2	1.4
85	1	1.2	—	—
100	15	17.8	20	13.8
120	1	1.2	—	—
125	2	2.4	—	—
130	1	1.2	2	1.4
150	10	11.9	20	13.8
160	—	—	1	0.7
175	—	—	2	1.4
180	1	1.2	1	0.7
200	11	13.1	22	15.2
225	1	1.2	3	2.1
250	2	2.4	12	8.3
300	2	2.4	25	17.2
Over 300	4	4.8	15	10.3
Not Reported	4	4.8	12	8.3
TOTAL	84	100.1*	145	100.2*

National Juvenile Prostitution Survey.

*Rounding error

Alcohol and Drugs

About a third of the youths were frequent or heavy users of alcohol and/or drugs with proportionately more young males than females reporting that they were using one or both of these substances. On average, drugs were more frequently resorted to than alcohol.

Almost three in four of these youths (73.4 per cent) either abstained altogether from consuming alcohol or only made moderate use of it, while half of the males (48.9 per cent) and two-thirds of the females (64.8 per cent) said that they were abstainers or moderate users of drugs. It is recognized that these young prostitutes who lived in an environment in which drugs and alcohol were readily accepted may have had a different idea of what constituted a "moderate" use of these substances from that held by most Canadians. Even so, the findings suggest that heavy drug and alcohol use may be less prevalent among these youths than might otherwise have been anticipated. However, it is also clear that a larger proportion of these youths of both sexes frequently made use of, or were addicted to, drugs and alcohol and that their use of these substances was considerably higher than that reported for other Canadian youths.[1]

Use of Alcohol and Drugs	Males (n=84)		Females (n=145)	
	Alcohol	Drugs	Alcohol	Drugs
	Per Cent	Per Cent	Per Cent	Per Cent
None/abstinence	19.0	6.0	34.5	31.0
Some to moderate	51.2	42.9	40.7	33.8
Frequent	27.4	40.5	15.9	24.1
Addicted	2.4	10.7	4.1	5.5
Not reported	—	—	4.8	5.5
TOTAL	100.0	100.1*	100.0	99.9*

*Rounding error

During the interval between when they began working on the streets and when they were interviewed, a third of the males (32.1 per cent) and a fifth of the females (22.8 per cent) had increased their consumption of alcohol, while the use of alcohol by one in seven males (14.3 per cent) and one in three females (33.1 per cent) had decreased during this period. The alcohol consumption of half of the males (53.6 per cent) and two in five of the females (39.3 per cent) had remained at a fairly stable level. The change in consumption of seven females was not ascertained.

Half of the males (51.2 per cent) and less than a third (29.6 per cent) of the females were frequent or heavy users of various types of drugs. Forty boys (47.6 per cent) and 36 girls (24.8 per cent) said that their use of drugs had

increased since they had become prostitutes, whereas 14 males (16.7 per cent) and 47 females (32.4 per cent) reported that they had reduced their use of drugs; 30 boys (35.7 per cent) and 53 girls (36.6 per cent) reported no change in their use of drugs since they had begun to work on the streets. The change in the use of drugs by nine girls was not known.

Although working on the street as a prostitute is a contributing factor in relation to the use of alcohol and drugs by young prostitutes, the survey's findings indicate that many of these youths had been drinking alcohol or using drugs before they had turned to this way of living. One in eight females (12.4 per cent) said that she had been addicted to alcohol and one in seven (14.5 per cent) had been a heavy user of drugs before turning to prostitution. Their experience contrasts with that of young male prostitutes, of whom only one in 12 (8.3 per cent) had previously been addicted to drugs and one boy said that he had been an alcoholic before turning to the street.

Although many of these youths had previously been accustomed to using alcohol and drugs before they became prostitutes, **the survey's findings clearly indicate that many of these youths had increased their use of these substances as they had become more deeply involved in "the life" on the street. The findings also underscore the nature of the potentially serious health risks incurred by these youths by their early frequent or heavy use of these addictive substances, risks that involved a larger proportion of males than females.**

Sexually Transmitted Diseases

As noted in Chapter 33, *Live Births, Therapeutic Abortions and Sexually Transmitted Diseases*, little is known about the actual or reported prevalence of sexually transmitted diseases among Canadians, their recognition of the signs of these conditions and the types of medical attention that are sought by those who have contracted these infections. Prior to conducting the National Juvenile Prostitution Survey, the Committee consulted the Bureau of Epidemiology of the Department of National Health and Welfare and was provided with a listing of medical clinics, centres and practices which it was believed had either developed special programs for the treatment of sexually transmitted diseases or to which persons having contracted these conditions were known to have turned to for treatment.

Recognizing the sensitive and confidential aspects of obtaining such information, the Committee augmented the listing that had been obtained and contacted the directors of these types of programs across Canada seeking statistics on the proportion of patients who were children or youths, the types of conditions known to have been contracted by them and counsel concerning how more effective assistance might be afforded these young patients.

Of the several dozen requests sent by the Committee, only two directors replied but declined to provide information, even of a statistical nature, about

the operation of these special medical programs. This cloak of professional silence about the existence and operation of these programs stems from the deeply entrenched fear of disclosure and the stigma associated with having contracted these diseases or of providing medical care for these patients. The direct consequence of this pervasive silence maintained by patients and attending professionals is that there is no reliable information for Canada concerning the extent to which certain highly vulnerable groups, such as young prostitutes, may incur serious long-term risks to their health or about how better medical attention might be provided for them.

Although prostitution is a pervasive and growing enterprise in Canada, the Committee knows of no research that has been undertaken in recent years[2-3] that has documented the extent of these diseases among young prostitutes. Accordingly, in the National Juvenile Prostitution Survey, the Committee sought to obtain information along these lines directly from youths who were working on the street. **The survey's findings show that a majority of these youths had at one time contracted sexually transmitted diseases, many took precautionary but ineffective measures in performing their sexual activities to avert these risks and most routinely sought medical attention either for a check-up or for treatment. The findings also clearly indicate that most of these youths were unaware, indifferent or fatalistic about the serious nature of the health risks that they were incurring as a result of their work as prostitutes.**

When they were engaged in sexual activities with tricks, about one in eight boys (11.9 per cent) and nine in 10 girls (90.3 per cent) said that they usually used some form of contraception. The remainder said that they routinely took no such precautions. It is relevant in this context to recall that these findings were obtained during 1982-83 when there was a growing public awareness of the sharp increase in the reported incidence of Acquired Immune Deficiency Syndrome (A.I.D.S.). Despite this shift in the recognition of the hazards of this condition, it is evident that the juvenile male prostitutes had not as yet sought to afford themselves better protection by contraceptive means. Twelve males (14.3 per cent) and 105 females (72.4 per cent) said that they used condoms, 54 girls (37.2 per cent) stated that they took oral contraceptives, eight girls (5.5 per cent) relied upon I.U.D.'s, and one girl said that she used a diaphragm.

Fifteen males (17.9 per cent) and 99 females (68.3 per cent) said that when they fellated tricks, they required their tricks to wear condoms, while 59 males (70.2 per cent) and 29 females (20.0 per cent) indicated that they did not take this precaution. One boy said that he sometimes imposed this condition on his tricks and three males and five females said that this decision was based on the trick's personal appearance. One girl required all of her tricks, except her regular customers, to wear a condom during fellatio, while another never made her regular customers wear condoms but made some of her other clients wear them. One male stated that, depending on whether he could afford condoms on a given day, he sometimes required that they be worn by his customers. Two boys and five girls said that they never fellated tricks.

Sixteen males (19.0 per cent) and 119 females (82.1 per cent) insisted upon their tricks wearing a condom during intercourse (the males were referring to anal intercourse). Thirty-nine boys (46.4 per cent) and 20 girls (13.8 per cent) did not require their tricks to use condoms during intercourse. The youths informed the Committee that their use of condoms and other forms of contraception was sometimes inconsistent. On occasion, some prostitutes were careless, while others dispensed with the use of condoms in exchange for extra payment.

Over two in three of the youths (males, 66.7 per cent; females, 71.0 per cent) sought medical care on a regular basis. However, in light of the risks of contracting venereal disease, a substantial minority of the juvenile prostitutes, slightly less than a third (males, 32.1 per cent; females, 28.3 per cent) did not regularly seek medical attention. Of those who did so, about three in 10 (males, 28.6 per cent; females, 29.0 per cent) were usually treated at a community health clinic. Eighteen males (21.4 per cent) and 37 females (25.5 per cent) consulted family doctors, while 14 boys (16.7 per cent) and 26 girls (17.9 per cent) usually visited a hospital clinic. Three males and one female had returned to their family physicians for treatment, one boy and three girls had gone to a hospital emergency unit, one boy had attended a psychiatric unit and five girls had contacted a public health nurse.

Half of the males (52.4 per cent) and two-thirds of the females (62.1 per cent) said that they had contracted a sexually transmitted disease, a sex-related disease or another condition since they had actively started working on the street. The disease most frequently reported was gonorrhea; 27 males (32.1 per cent) and 55 females (37.9 per cent) said that they had had gonorrhea at one time or another while working on the street. Syphilis was the second most common disease, with nine males (10.7 per cent) and 20 females (13.8 per cent) indicating that they had been infected at least once. Almost one in four males (22.6 per cent) but only about one in 50 females (2.1 per cent) had had crabs. The findings in Table 45.5 list only those conditions that the youths believed or had known that they had had. The likelihood is that the actual prevalence of these conditions was higher than that reported by them.

About nine in 10 youths (males, 84.1 per cent; females, 94.4 per cent) had sought treatment for their diseases and ailments (listed in Table 45.5). Two boys and four girls said that they had not attempted to obtain medical assistance. Five boys and one girl who had suffered from one or more of these medical conditions did not indicate whether they had attempted to obtain treatment. Four males (4.8 per cent) and 27 females (18.6 per cent) stated that at some time they had been infected but had continued to work on the street. One male and 14 females who had continued to work said that they had done so because they had been unaware that they were infected. Two males felt no compunction about turning tricks while they were infected because they did not care what happened to their customers.

Table 45.5

Sexually Transmitted Diseases Contracted by Juvenile Prostitutes While Working on the Streets

Disease	Males (n=84)		Females (n=145)	
	Number	Non-Accum. %	Number	Non-Accum. %
Gonorrhea	27	32.1	55	37.9
Pelvic Inflammatory Disease	—	—	5	2.1
Syphilis	9	10.7	20	13.8
Herpes	1	1.2	6	4.1
Venereal Warts	3	3.6	3	0.7

National Juvenile Prostitution Survey. In addition, one girl admitted to having a precancerous condition of the uterine cervix four girls had diagnoses of cancer of the cervix and 10 girls reported having had hepatitis (jaundice).

While the findings concerning sexually transmitted diseases, found in the National Juvenile Prostitution Survey have not been medically confirmed, there can be little doubt that the self-reported numbers of sexually transmitted diseases are alarmingly high. Even if a small proportion of these conditions had actually occurred, then a sizeable number of these youths could be considered at risk of developing serious and long-term complications due to their infections.

On reviewing the list of reported conditions, it is clearly evident that the number of cases of syphilis in young females is greater than expected whereas the males are in the expected range. The prevalence of gonorrhea in these groups is disturbingly high. The number of cases of complications due to gonorrhea in the females, e.g., pelvic inflammatory diseases, are at the expected level of occurrence.

Although not considered medically as a sexually transmitted disease, the presence of cervical cancer in four girls and cervical dysplasia in an additional young prostitute, place these females in a precarious situation with a guarded prognosis. The multiplicity of partners may be a factor in the evolution of this condition, although the actual cause still remains obscure. While most of the group said they routinely sought medical attention, a substantial minority admitted they had not bothered to seek medical assistance.

These findings lend additional support to the Committee's recommendation in Chapter 3 regarding the need for research in these matters and for the undertaking of a strong national program of public education and health promotion.

Street Violence

All of the prostitutes interviewed in the National Juvenile Prostitution Survey were adolescents; many had come from homes which would not have prepared them to survive well the conditions which they initially encountered when they began working on the street. In this regard, the Committee's findings show that street violence constitutes a different, yet equally as great a threat to young prostitutes as do sexually transmitted diseases.

In relation to providing protection for themselves, the Committee learned of a few instances in which an informal "buddy system" had been developed by female prostitutes in certain cities. Under this system, every time a prostitute entered a trick's car, one of her friends noted the vehicle's licence number. If the prostitute had not returned to her usual spot on the street after a reasonable length of time, the friend would report the licence number to a police officer. These informal protective practices, however, were not employed by most of the youths. When they were asked whether they worked alone or with another person, four in five males (79.8 per cent) and over two in three females (68.3 per cent) said that they usually worked by themselves. Of the few who worked with another person, only two males and seven females said that they

Table 45.6

Types of Assailants Reported by Juvenile Prostitutes

Types of Reported Assailants	Males (n=84)		Females (n=145)	
	Number	Non-Accum. %	Number	Non-Accum. %
Trick	18	21.4	88	60.7
Pimp	4	4.8	35	24.1
Prostitutes	10	11.9	20	13.8
Drug dealer	5	6.0	3	2.1
Friend	2	2.4	5	3.4
Police (plainclothes)	9	10.7	16	11.0
Police (uniformed)	9	10.7	11	7.6
Family member	1	1.2	2	1.4
Boyfriend	1	1.2	1	0.7
Breeder/Queer-basher	11	13.1	—	—
Transient street people	1	1.2	—	—
Taxi driver	—	—	1	0.7
Stranger/passerby	2	2.4	5	3.4
Friend of family	—	—	1	0.7

National Juvenile Prostitution Survey.

had developed an informal buddy system as a means of self-protection. It is evident that, for the most part, juvenile prostitutes typically do not rely upon one another to assure their safety when they are working on the street.

In relation to the risks that they encounter, about two-thirds of the youths (63.3 per cent) had at least once been physically assaulted while working on the street. Girls were at greater risk of having been assaulted than boys (females, 70.3 per cent; males, 51.2 per cent). Three major groups of assailants were responsible for these actual or alleged assaults against juvenile prostitutes. These were: tricks; other persons involved in street life (pimps, other prostitutes, drug dealers); and police officers. Nineteen boys (44.1 per cent) and 45 girls (44.1 per cent) who had been assaulted reported that they had required medical attention.

Life on the downtown streets of a number of major Canadian cities involves much violence. The youths who survive by prostituting themselves in this environment are subject to considerable risks of contracting disease and of being physically injured. These harms constitute serious occupational hazards that are inherent in street prostitution. The young prostitutes responded to these hazards by familiarizing themselves with, and making using of, a variety of facilities providing medical services. However, these were the only helping services to which these youths turned to with any regularity. **Typically, they used only those services which they deemed were vital to their short-term professional survival, namely, those that enabled them to continue functioning on the street. Those agencies having services which might assist these youths' long-term welfare (e.g., child protection agencies, group homes, religious organizations) were mistrusted, regarded as useless or were ignored. These helping agencies were only turned to by those young prostitutes who were unsuccessful, who were seeking a temporary haven, or in a small number of cases, by those who were trying to leave the street altogether.**

Relations with the Police

The youths' day-to-day encounters with police officers patrolling the streets constituted their closest and most regular contact with the law and with persons responsible for its administration. Accordingly, the young prostitutes were asked to describe their relations on the street both with uniformed and plainclothes police officers. Their replies suggest that proportionately more of the males than the females had a poor relationship with uniformed police officers. Of the males, two in five (42.9 per cent) characterized their relationship with uniformed police as informal and friendly, as compared to over half of the females (54.5 per cent). Relatively few of these youths said that they had actively co-operated with the police. Only four boys had given information to uniformed officers, whereas nine girls had co-operated in this way, and a far smaller proportion of the boys (2.4 per cent) than of the girls (9.0 per cent) had discussed their personal problems with the police. On the other hand, the proportion of the males who stated that police officers had physically abused them (21.4 per cent) was slightly higher that of the females (18.6 per cent).

When asked whether they felt that the police had a right to investigate them while they were working, about two in five of the youths (42.8 per cent) said that the police had this right while 53 males (63.1 per cent) and 76 females (52.4 per cent) believed that the police should not interfere with what they were doing. Among those who felt that the police should not investigate them, one in five youths (20.5 per cent) explained that his or her professional activities involved private transactions with tricks which were none of the police's business. Seventeen males (20.2 per cent) and 23 females (15.9 per cent) said that the police had the right to investigate them only if some type of harm was involved. Another 10 males (11.9 per cent) and 10 females (6.9 per cent) said that what they did for a living was like any other job, and therefore, that they should not be hassled or harassed.

Child Welfare Court

Over a third of the juvenile prostitutes (37.1 per cent) had at one time appeared before a family or social welfare court (28 males and 57 females). The circumstances leading to these hearings had included:

- The youth's parents had lost custody with the result that the youth had been placed in a foster home (one male and four females);
- The youth was found to be truant (two males and two females);
- Incest with the youth's father had been reported; the youth had been placed in a foster home (one male and five females);
- The girl's mother had found out about the youth's involvement in prostitution and did not want her to return home (one female);
- The boy had been found drinking when under-age; his parents were held to have been negligent (one male);
- The youth had been placed in foster homes after repeatedly running away (two males and two females);
- Custody hearing in connection with divorce proceeding by youth's parents (one male and two females);
- Parents had been unable to control the youth's behaviour (two males and five females);
- The girl's mother died and her father had lost custody (one female);
- The youth had been involved in adoption proceedings as a baby (one male and four females);
- Both parents had died (two females);
- The girl, at age 14, had given up a child for adoption (one female);
- The youth had been "in-and-out" of foster homes throughout his or her childhood (one male and two females);
- Custody dispute, won by the youth's mother (one male and one female);
- Custody dispute, won by the youth's father and step-mother (one male and one female);

- The boy had been placed in a foster home for one year while his mother had received treatment for alcoholism (one male);
- The girl had been apprehended by a child protection service while she had been working on the street (one female);
- The youth had been made a ward of the court (two males and one female);
- The girls had continually run away from home and were ordered to undergo psychiatric assessment (three females);
- The girls' mothers had drinking problems (two females);
- The boy had been removed from his home as a result of physical and sexual abuse by his father (one male);
- The girl had been removed from her home as a result of physical abuse by her mother and sexual abuse by her father (one female);
- The girl, at age 16, had been charged with breaking-and-entering (one female);
- The boy had been removed from his home as a result of physical abuse by his parents (one male);
- The girl's mother committed suicide when the child had been six years-old (one female).

As a result of their appearances in Family or Social Welfare Court, 11 boys (13.1 per cent) and 24 girls (16.6 per cent) had been placed in foster homes, while 11 boys (13.1 per cent) and 19 girls (13.1 per cent) had been sent to group homes, and four males (4.8 per cent) and 13 females (9.0 per cent) had been placed in treatment facilities. In addition, three males (3.6 per cent) and 10 females (6.9 per cent) had had a variety of other living arrangements made for them by the courts.

The findings of the National Juvenile Prostitution Survey indicate that many of these youths who were later found delinquent and had become involved in the criminal justice system had had their first encounters with legal proceedings as a result of hearings before family or social welfare courts. These early encounters with the law had typically been precipitated by events involving the break-up of their families. These findings are consistent with those concerning the high proportion of the families of these youths in which their parents had separated during their childhood or adolescence (Chapter 43, *Social Background*). It is evident that many of these youths had come from troubled homes in which a nurturing family environment had been so severely ruptured as to require the intervention of child protection services and the legal system. For many of these youths, these disruptive experiences were integral to their decisions to run away from home, to drop out of school early and contributed to many being later found delinquent by the courts.

Juvenile Court

Of the 229 juvenile prostitutes, 34 males (40.5 per cent) and 64 females (44.1 per cent) had been found delinquent before a juvenile court. As a result

of these hearings, 20 boys (23.8 per cent) and 20 girls (13.8 per cent) had been sent to a detention centre, four males (4.8 per cent) and 22 females (15.2 per cent) had been placed in a training school, two males and three females had been placed on probation, two males and three females had been fined, and two males had been assigned to a community work project. Eight boys (9.5 per cent) and 19 girls (13.1 per cent) had been sent to foster homes, while 12 males (14.3 per cent) and 20 females (13.8 per cent) had been placed in group homes, six males (7.1 per cent) and 15 females (10.3 per cent) had been placed in treatment facilities, one male was returned to an orphanage from which he had run away, two females stated that they had been sent home to their parents, one female was placed in an extended family and one other girl had had a private boarding arrangement made for her. One girl was placed in a Catholic reformatory, while another said that she had been reprimanded. Two boys and two girls stated that nothing happened to them as a result of being found delinquent.

Charges Laid for Soliciting

The juvenile prostitutes were asked about their knowledge of the elements of the offence of soliciting, whether they had ever been charged with this offence, and if this had occurred, what had been the disposition of these charges.

On the basis of preliminary interviews with a number of these youths prior to the development of the research protocol that was used in the survey, it was found, and later confirmed by the survey's findings, that relatively few of these youths behaved in a manner when they were working on the street that accorded with the requirements of the soliciting offence. Since it was unknown whether they conducted themselves in this way in order to avoid being charged for "pressing and persistent" behaviour or for other reasons, questions were included in the survey concerning their knowledge of the elements of this offence. Forty-seven males (56.0 per cent) and 98 females (67.6 per cent) did not know what had to be proved against them in order for them to be convicted of soliciting (that is, they did not know the elements of the offence of soliciting). Only 37 males (44.0 per cent) and 47 females (32.4 per cent) were able to state with approximate accuracy the elements of the offence of soliciting. In addition, when they were asked whether they were aware of recent Supreme Court of Canada decisions with respect to soliciting (e.g., the decision in *R. v. Hutt*[4]), 62 boys (73.8 per cent) and 120 girls (82.8 per cent) said that they had no knowledge of these decisions. Only about one in four males (26.2 per cent) and fewer than one in six girls (15.9 per cent) were aware of these decisions.

These findings indicate that many of these youths were not only naive and poorly informed concerning legal matters that directly affected them, but also suggest that for the most of them their relatively circumspect conduct on the street did not result from a deliberate effort to avoid violating section 195.1 of

the *Criminal Code*. This conclusion is reinforced by the finding that only a few of these youths had ever been charged with soliciting. Only six males (7.1 per cent) and 25 females (17.2 per cent) had been so charged. Of the 229 youths in the survey, four males (4.8 per cent) and 21 females (14.5 per cent) had been charged as adults, while two boys and four girls had been charged as juveniles. Almost three-quarters of these 31 youths (74.2 per cent) had only been charged once or twice with soliciting.

Offence of Soliciting	Juvenile Prostitutes			
	Males (n=84)		Females (n=145)	
	Number	Per Cent	Number	Per Cent
Charged with soliciting	6	7.1	25	17.2
Convicted of soliciting	4	4.8	18	12.4

Of the youths who had been charged with soliciting, only two males and seven females stated that they had never been convicted of the offence, while three males and 14 females said that they had been convicted on only one occasion. Thus, of the 229 young prostitutes interviewed in the survey, one in 10 (9.6 per cent) had ever been convicted of soliciting, and of these, only one in 46 (2.2 per cent) had been convicted more than once. Furthermore, of the 31 youths who had been charged with soliciting, four claimed that they had not been working as prostitutes at the time and two stated that they were working only occasionally when they had been charged. Of this latter group, two males and one female said that they were "hanging around", one girl stated that she was going for a walk and another two girls said that they were meeting friends.

Although the number of juvenile prostitutes who had been charged and convicted of soliciting is small, in each case, girls had been involved proportionately two and a half times more often in these encounters with the law than had boys. Almost three-quarters (74.2 per cent) of the 31 youths who had been charged with soliciting stated that they had been arrested when they were charged. Eight females said that the charges laid against them had been withdrawn. Of those who were convicted of soliciting (some of the youths were convicted more than once), one male and nine females indicated that they had been fined. Three boys and five girls had been sent to jail. Eight females had been placed on probation. One female had received a conditional discharge, while one male and two females had been ordered to stay away from their usual work area. One girl was sent to a detention centre, another to a training school and one had been referred to a social service agency.

In light of the findings of the National Juvenile Prostitution Survey, it is evident that the offence of soliciting for the purpose of prostitution had seldom impinged upon the street activities of the juvenile prostitutes. For most of them, these provisions barely constituted an inconvenience since in conducting

their business they had found that it was unnecessary to solicit in the manner specified by the elements of this offence. Few of these youths had deliberately changed their manner of approaching their potential customers in order to circumvent the elements of the soliciting offence. Most of them, in complete ignorance of the law, had simply never found it necessary to engage in soliciting conduct that contravened the terms of section 195.1 of the *Criminal Code*. They typically adopted more discreet means of indicating their availability, signals which were well recognized by their potential customers. It is also evident that in seeking to control juvenile prostitution, enforcement authorities more often resorted to other legal measures to achieve this purpose.

Publication of Names

Twelve youths or two in five (38.7 per cent; three males and nine females) of those who had been arrested at some time while they had been working on the street, said that their names had been reported in local newspapers. Proportionately, this had happened more often when males (50.0 per cent) than females (36.0 per cent) had been arrested. Of those whose names had been reported in newspapers, two males and seven females said they had been identified by their real names, while one male and two females said that their street names had been published. Three boys and five girls also claimed that the publication of their identities had caused them problems. Three girls said that their families were upset and one girl stated that her parents, who were living in another province, had found out from the newspaper account that she was a prostitute. One boy and one girl stated that they had been hassled by the police after their names had appeared in a newspaper. One boy said that he began receiving obscene telephone calls after his name was published, while another boy had been bothered by persons who asked him about his arrest.

In comparison with the findings reported in Chapter 22, *Publication of Victims' Names*, the fact that the names of about two in five of the juvenile prostitutes who had been arrested had been published suggests that newspapers were somewhat less careful in protecting young prostitutes from publicity than the young victims of sexual offences. This situation will be dealt with in the future by the *Young Offenders Act* since its provisions prohibit the publication of the names of youths who are involved in legal proceedings.

Charges Laid for Other Offences

In addition to being asked whether they had been charged and convicted of soliciting, the juvenile prostitutes were also asked if they had been convicted of other offences. Their replies leave no doubt that, for many of these youths, a career in prostitution introduced them to a criminal way of life. On average, these youths of both sexes had been charged other than for soliciting with 1.3 offences. Half of them (50.2 per cent) had been charged with property

offences, one in four (24.9 per cent) with loitering, about one in five (18.3 per cent) with various sexual offences, about one in eight (11.8 per cent) with having assaulted another person, one in 12 (8.7 per cent) with offences involving the use or possession of alcohol and drugs, and about one in five (19.2 per cent) for an assortment of other offences.

Charges Other than for Soliciting Laid Against Juvenile Prostitutes	Juvenile Prostitutes			
	Males (n=84)		Females (n=145)	
	Number	Non-Accum. %	Number	Non-Accum. %
Loitering	16	19.1	41	28.3
Property offences	49	58.3	66	45.5
Sexual offences	12	14.3	30	20.7
Assaults against the person	11	13.1	16	11.0
Alcohol and drugs	9	10.7	11	7.6
Other offences	13	15.5	31	21.4

Despite their earnings as prostitutes which putatively provided most of them with a level of income that they could not have readily obtained from conventional types of employment (due to their low level of education and general lack of work experience), it is evident that a substantial proportion of these youths had attempted to augment their incomes by means of theft. Almost half of the boys (47.6 per cent) and over a third of the girls (37.9 per cent) had been charged at least once with theft under or over $200, robbery, possession of stolen goods and shoplifting.

While many of these youths had been victims of violence themselves, the charges laid against them indicate that about one in eight (11.8 per cent) had been charged with assault against another person. In a few of these incidents, serious crimes of violence may have been committed. These crimes with which the youths had been charged included: assault causing bodily harm (six males and four females); attempted murder (one male); and accessory after the fact to murder (one male and one female).

The Committee's findings leave no doubt that one of the principal social harms associated with becoming a juvenile prostitute is that many of these youths had also become criminally experienced as a result of having committed a variety of offences which are integrally associated with their work on the street. In this regard, the charges that had been brought against them for soliciting were almost incidental in comparison to the far larger number of charges that had been laid against them for other types of offences.

While earlier in their lives and during the period when they were becoming prostitutes many of these youths had come in contact with Child Welfare

Courts and had been assigned to the protection of various helping services, it is evident that these contacts and the assistance so afforded had been ineffectual in averting them from subsequently embarking or continuing in a career of prostitution. In addition to their contacts with medical services initiated for the expedient purpose of enabling them to continue their work as prostitutes, the second grouping of public services with which most of them regularly had contact were the police and the courts. Few of these youths had sought assistance from other types of public and voluntary helping agencies. Most did not believe that they needed to help and many rejected the types of assistance being offered as inappropriate or irrelevant to their situation.

Advice to Other Youths

In response to being asked what advice they would give to a boy or girl who was starting out on the street, the majority of the youths regarded prostitution as an occupation which other young persons should be strongly discouraged from entering. Thirty-six males (42.9 per cent) and 57 females (39.3 per cent) said they would advise a boy or girl against working on the street, while another 21 boys (25.0 per cent) and 23 girls (15.9 per cent) said that they would tell a prospective juvenile prostitute to "go home". A few (9.6 per cent) felt so strongly about this question that they said they would take steps to prevent a youth who was thinking of entering into "the life" from doing so. On the other hand, 13 males (15.5 per cent) and 31 females (21.4 per cent) said that they would help or give practical advice to such a youth. One girl stated that she would try to recruit the young person to work for her pimp. Three males and four females said that they would offer no advice and would avoid getting involved in any way.

In their own words, the following statements are examples of the advice that the youths said they would offer to a young person who was just beginning to work as a prostitute:

Advice Given By Female Juvenile Prostitutes

- Don't do it; a criminal record blackens your reputation. You can get hurt if you're not street-wise.
- If you are going to do it, stay away from pimps and drugs.
- It's your body, and the lowest thing you can do is to sell it. At least keep the money for yourself. Don't sell [your body] to a pimp.
- The street screws you up. If you work, work for yourself.
- GO HOME! You are going to be ruining your life. You'll look in the mirror every day and see a slut.
- I'd kick her butt home. They [young girls] shouldn't be here.
- If you need the money that bad, I'll help you out. [Working the street is] not worth it.

- Once you know you can make money, you keep on doing it and rely on it.
- Go home. Pimps are terrible and drugs are the pits. Kids shouldn't be here. You'll be old before you know it.
- I'll punch you in the face if you do — (I'd force her off the street).
- Think twice — it's a hard life.
- Beat it. You won't be happy. You'll get old before your time.
- Go back to school. [On the street] you never know if you are going to die.
- Go home. You don't want to be a slut your whole life.
- It's a disgusting way to live.
- Don't do it. It will make you feel bad about yourself when you get older.
- Don't. There are other places to go and get taken care of. For someone so young, [street life is] awful.
- Go home. Look at me.
- You're going to get hurt. You can't get away from ["the life"]. (I called the cops on one young girl.)
- I'll wring your neck if I see you on the streets. (I'd tell her what I've been through, and try to find her a place to stay).
- You'll never get off the street. It's like an addictive drug.

Advice Given by Male Juvenile Prostitutes

- I'd tell her to stay off my corner, and would point out the bad tricks.
- If the kid were young and naive, I'd try to scare him off.
- If you're a runaway and your family will take you back, go!
- There's no future.
- You are crazy. It's a terrible way to get money.
- It's emotionally disturbing.
- Get the hell off the street!
- I wouldn't advise anyone to do it!
- You'll get really messed up if you do.
- I would physically take him off the street [and would tell him that] he's too young, and it's easy to start, but hard to stop.
- I'll punch you out if you don't get off the street.

The juvenile prostitutes were asked "If you had your life to live over, would you work the streets again?" About three in four of the youths (73.8 per cent; 54 males and 115 females) gave a negative reply responding that they

would choose to follow a different course from that which they had taken. Proportionately, over twice as many males (34.5 per cent) as females (14.5 per cent) said that they would again choose a life of prostitution. Most of the youths, especially the girls, regretted having become prostitutes and felt that they had made a mistake in choosing this career.

Perceptions of Street Life

The youths were asked to express in one sentence how they would best describe their way of life on the street. About two in three (67.7 per cent) portrayed their lives in negative terms. Only 16 boys (19.0 per cent) and 20 girls (13.8 per cent) had anything positive to say about street life. A further seven males (8.3 per cent) and 16 females (11.0 per cent) expressed mixed or equivocal feelings about "the life".

Female Juvenile Prostitutes

- It is hard and frustrating.
- I'm never cold and hungry, always have money. I am respected by my friends.
- Horrible and disgusting, but the money is good. You risk your life.
- It is disgusting. I wish things would change.
- It is dog eat dog — everyone stealing from everyone else.
- Freedom. It gives me a place to get away from my family.
- It's scary and risky. You never know what's next.
- It screws you up mentally. It's crummy. The life leads you nowhere.
- It's demeaning.
- A real fucked up life.
- It's very exciting, but it can control you like a drug.
- It's a hell hole.
- It's boring, depressing and full of losers.
- It hurts and it is so lonely.
- There's money, but it eats you up. You can't get away from it. It's like a big steel trap.
- It's addictive. You always come back.
- You have to be very low to abuse your own body like this.
- It is exciting and you meet lots of friends. I feel like a somebody.
- It's scary.
- It is a depressing life, but the money keeps me coming back.

- It's a difficult life. You don't know who you're getting [into a car] with, or what the guy is going to do to you.
- It is a waste of human life.
- You feel really terrible about yourself. It's really depressing.
- Life on the streets could destroy you.
- Sadness and darkness all the time.
- Very hard to do because of the violence involved.
- It's an experiment. You learn new things and how to take care of yourself.
- Lonely, cold and degrading.
- It's having a good time and having friends around.
- It's just one long, bumpy road. It's hard to find a turnoff to get away from it.
- It's all the worst society has to offer.
- It is dark, over-powering and it hurts so much.
- It is a dark hallway going nowhere.

Male Juvenile Prostitutes

- Depression, loneliness, being fucked up, with no hope.
- I love my job.
- A day-to-day, temporary existence that is insecure. Anything can happen.
- Fun, exciting and adventurous. You meet new people and find out what life's really about.
- It's disillusioning. It makes it easy for you to lose the ability to be a caring human being. When you can't care, you're no good to anyone.
- It can be dangerous if you don't know how to take care of yourself.
- It's fascinating. You grow up faster than anywhere else and see the world from a whole new point of view.
- A vicious circle, leading to self-destruction and depression.
- Emotionally and physically wrecking.
- Fast times, lots of drugs and no early mornings.
- An open world for anyone to learn from and explore themselves.
- It's a black hole.
- On the street, when things are good, they're really good, and when things are bad, they're really bad.
- It's a painful, slow death of your emotional and personal feelings and self-pride.

There is a striking discordance between what juvenile prostitutes were doing and how they perceived these activities. While most described prostitu-

tion in negative terms, many were unwilling to acknowledge to themselves that they were prostitutes. A clear example of the process of rationalization relied upon by these youths is provided by their replies when they were asked whether they regarded themselves as prostitutes. Half of the males (50.0 per cent) and about a third of the females (34.5 per cent) were prepared to acknowledge that they were prostitutes. However, three in five youths (59.8 per cent) were unwilling to admit either to the Committee's researchers or to themselves that they were prostitutes.

The explanations offered by the youths who were unwilling to acknowledge that they were prostitutes indicates the nature of their deeply held ambivalence about their way of life on the street. Some of these youths attempted to distinguish themselves from prostitutes by stating that they were involved in some other profession. Two girls, for example, stated that they were "in public relations", another insisted that she was just a "working girl", and one insisted that she was "a lady of the night". Two boys referred to themselves as "commercial artists". Other youths had found different ways of distinguishing their activities from those of prostitutes. One male argued that he was not a prostitute because his customers approached him. Four girls stated that they were not prostitutes because they worked only for themselves (that is, they did not have pimps), while one male and two females felt that they were not prostitutes because they did not enjoy turning tricks and were revolted by their customers. One girl stated that she was not a prostitute because what she was doing did not harm anyone, while one boy said that he was "just selling a service", and therefore, was not a prostitute. Another male said that he was not a prostitute because he had an alternative to turning tricks and could always "go to something else". Five girls said that they did not consider themselves prostitutes because what they did was "like any other job" and because "other girls give it for free".

Even though many of the youths denied that they were prostitutes, their demeanour while being interviewed and their replies denote low self-esteem and a deep-seated image of themselves as "sluts" and "whores". Most of the girls had persuaded themselves that their pimps were not pimps, but rather, were their boyfriends, lovers or fiancees. Furthermore, as previously noted, many had developed personal codes which delineated between the sexual acts that they were and were not willing to perform. In this manner, they were able to rationalize that they were not like other youth on the street who were prepared to do "anything for money".

Most of the youths were also convinced that they were destined to get off the streets, and that they would be able to find conventional, well-paying jobs, even though relatively few of them had taken or even considered decisive or concrete steps to facilitate their rehabilitation. Most described street life in negative terms, stated that they would not work on the street if they had their lives to live over and indicated that they would advise a young person starting out on the street as a prostitute not to get involved in "the life". At the same time, most were still actively working as prostitutes.

These irreconcilable contradictions indicate that most of these youths held two sharply contrasting images about themselves. On the one hand, they formed an image of themselves from their troubled backgrounds, their way of life on the streets, the acts they performed with tricks, their relationships with pimps, their lack of work skills and education and their limited prospects for the future. On the other hand, many had constructed a more palatable and flattering self-image of themselves. This alternate self-image was of a person who was not a "whore", who had no personal involvement with tricks, and in the case of the girls, who had a boyfriend or lover of whom she was proud, who was good to her and who eventually would marry her. This fictitious and more ideal person whom they believed they were had excellent future prospects of attaining a normal, happy and prosperous life.

This self-deceptive image constitutes a defence which makes it possible for juvenile prostitutes to deny the depressing realities of their day-to-day existence. This pretense makes their lives more tolerable and gives them some hope in a seemingly hopeless situation. But the imagined "better self" may be one of the factors which serves to keep them on the street, since the manufactured sense of hope may effectively function as a conceptual opiate that dulls the reality and lets them resign themselves to the conditions in which they live and work. As long as there is some vague prospect of changing their lives tomorrow, the juvenile prostitutes retain an incentive to "stick it out" and to continue working on the street until they have saved enough money to break away, until they have the chance to return to school, until, in the case of girls, their boyfriends (pimps) marry them, or until they get off drugs. In practice, these anticipated events are seldom actually realized with the result that the hope of quitting the street remains a perpetually unfulfilled longing for the future. Thus, while it may seem contradictory, it appears that as long as these youths maintain the pretense that some part of them is determined to break away from "the life", there remains sufficient justification for them to continue prostituting themselves. Males are in a more advantageous position than the females; by the time a male juvenile prostitute reaches his early twenties and begins to lose the youthful appearance that makes him a marketable commodity on the street, he is forced to find some other means of supporting himself. No similar age restrictions limit the careers of female prostitutes who, although losing the freshness of their youth, may continue to work on the streets almost indefinitely for progressively less money and in progressively more shabby and dangerous locations.

Prospects for the Future

The youths were asked, if all obstacles were removed, in what position they saw themselves five years in the future. About three in five (57.2 per cent; 52 males and 79 females) envisaged themselves as having a "straight" (conventional) job, earning a high income, being settled and having left the street. Another 13 boys (15.5 per cent) and 30 girls (20.7 per cent) said that they saw

themselves married, having children and being settled down at the end of five years. One male and five females indicated that their ambition was to become involved with professional helping services offering assistance to future generations of children and youths on the street, while three males and four females saw themselves living out fantasies, such as residing on a tropical island. Four boys and one girl anticipated having an operation involving a change of sex. Finally, eight males (9.5 per cent) and 19 females (13.1 per cent) said they felt that they had no future, no hope, and did not expect that their lifestyle would change. Overall, about four in five of the youths (78.6 per cent) had expectations of giving up prostitution and finding a more positive and conventional way of living within the space of a few years.

Table 45.7

Steps Reported Being Taken by Juvenile Prostitutes in Order to Get Off the Street

Actions Reported Being Taken To Get Off the Street	Males		Females	
	Number	Per Cent	Number	Per Cent
Saving Money	13	15.5	18	12.4
School	19	22.6	34	23.4
Intending to get off the street	—	—	4	2.8
Counselling	3	3.6	9	6.2
Chemical treatments and psychiatric assessments for sex change	2	2.4	—	—
Engaged to be married	—	—	1	0.7
Looking for a wealthy person (a "sugar daddy")	1	1.2	—	—
Looking for a job	7	8.3	8	5.5
Getting off drugs	2	2.4	3	2.1
Working at a straight job	2	2.4	1	0.7
Applied for entrance to a trade school	2	2.4	1	0.7
Attending Alcoholics Anonymous meetings	—	—	1	0.7
Other	3	3.6	3	2.1
None/nothing	25	29.8	38	26.2
Not reported	5	6.0	24	16.6
TOTAL	84	100.2*	145	100.1*

National Juvenile Prostitution Survey.

*Rounding error

When asked whether they were taking definite steps to achieve their ambitions, few were able to specify tangible actions that they were taking in order to make a decisive break from prostitution. (e.g., saving money, getting off drugs, going to school on a part-time basis). None of the males and only four females said that they were actually intending to get off the street. The fact that about one in four (23.1 per cent) was obtaining some form of schooling must be interpreted cautiously since when they were asked directly if they were students, only one in 10 (10.0 per cent) said that he or she was still a full-time student. Most who said that they were studying were involved in correspondence courses and a few were attending night school. However, most who said that they were trying to improve their education were doing so in a manner that afforded them ample time to continue working as prostitutes. Twenty-five males (29.8 per cent) and 38 females (26.2 per cent) frankly acknowledged that they had taken no tangible steps to get off the street.

Only one juvenile prostitute (0.4 per cent) in the survey, a girl, said that she had sought assistance from Alcoholics Anonymous. **A number of these youths, more often young girls than boys, had stayed briefly at street havens or hostels. However, it is significant that virtually all of the youths (99.6 per cent) in the National Juvenile Prostitution Survey did not refer to these services as a source of assistance nor had they turned to other social and community agencies in order to help them to withdraw from working on the street and to embark on a new career.**

While the Committee did not compile a national inventory of all social services which may have been established to provide out-reach programs for these youths, many agencies were contacted in the cities where the survey was conducted. There is a stark paradox between the growing public concern about the problem of juvenile prostitution and the actual number of special ameliorative programs mounted to serve the needs of these youths. In the cities where the survey was undertaken, few special programs had been established for these youths, and during the interval of the Committee's three year review, the activities of several were curtailed, and in one instance, terminated.

The juvenile prostitutes were asked to identify the main obstacles that might prevent them from leaving the street. While some of their replies constitute convenient rationalizations serving to justify their failure to take action in order to rehabilitate themselves, several of the reasons cited show their clear awareness of the nature of the difficulties that they would likely encounter if they attempted to break away from prostitution. There can be little doubt that their lack of education will make it difficult for most of them to embark upon careers leading to well-paying, conventional jobs. The jobs that these boys and girls are likely to find may make the fast money and lack of personal restrictions associated with prostitution appear attractive by comparison. For these reasons, it is apparent that many attempting to change their lifestyle may be sorely tempted to return to prostitution. Others may conclude that the obstacles to their rehabilitation are insurmountable and may be discouraged from making any attempt to change their lives.

Table 45.8

Obstacles to Getting Off the Street Reported by Juvenile Prostitutes

Obstacles Reported To Getting Off The Street	Males (n=84)		Females (n=145)	
	Number	Non-Accum. %	Number	Non-Accum. %
Lack of support from family	23	27.4	32	22.1
Economic need	33	39.3	51	35.2
Addiction	10	11.9	17	11.7
Low self-esteem, depression	15	17.9	35	24.1
Lack of alternatives	14	16.7	17	11.7
Social environment, friends	17	20.2	22	15.2
Influence of pimp/ boyfriend	1	1.2	5	3.4
Legal system	13	15.5	23	15.9
Lack of education	28	33.3	39	26.9
Unemployment/the economy	5	6.0	1	0.7
Lack of employment experience	4	4.8	—	—
Society's treatment of homosexuals	4	4.8	—	—
Other	7	4.8	12	8.3

National Juvenile Prostitution Survey.

When they were asked how existing or new services might be tailored to help them, more than half (54.1 per cent) favoured the setting up of hostels, residences or drop-in centres designed specifically for prostitutes. The youths identified a number of special features that they felt such facilities should offer, including:

- Counselling services;
- No curfews;
- Legal aid services;
- No government affiliation;
- Protection from pimps;
- Medical facilities such as sexually transmitted disease and birth control clinics;
- Some structure and discipline;

- Life skill training;
- Locations possibly away from downtown cores;
- Respect for confidentiality.

Fourteen males (16.7 per cent) and 12 females (8.3 per cent) said that job creation programs could help to rehabilitate young prostitutes. Another two boys and eight girls favoured the legalizaton of prostitution, while five males and eight females recommended the establishment of a variety of different services, including: gay counselling centres; funding for back-to-school programs; and more community activities for youths in the suburbs. Finally, five males and eight females gave miscellaneous responses (e.g., that young prostitutes would be unwilling to avail themselves of any helping services, that good services already existed, but were inaccessible to young prostitutes).

Those youths who advocated the creation of hostels or residences were asked how they should be set up and who should run them. A quarter (24.5 per cent) said that these services should be run by former prostitutes who knew and understood street life, while one in seven (14.0 per cent) felt that these programs should be operated by multidisciplinary teams consisting of professionals and former prostitutes. One male and eight females stated that the residences or hostels should be run by persons who were understanding and non-judgmental. A variety of other suggestions included that these facilities should be run by: female police officers; gay persons who understood the problems of homosexuals; former drug addicts; counsellors hired with government funding; "persons who believe in the kids on the street", and psychologists.

Summary

1. While working on the street, about one in 20 (4.8 per cent) of the juvenile prostitutes had a conventional full-time job and about one in 11 (8.7 per cent) had worked on a part-time basis. Most of the youths regarded prostitution as their main source of income.

2. About three in four youths (72.5 per cent) worked as prostitutes on a year-round basis and two in three (64.2 per cent) spent at least four days each week working on the street. Over seven in 10 (72.9 per cent) averaged over five hours each day working as prostitutes.

3. Because the survey focussed primarily upon youths working on the street, not unexpectedly, most of the juvenile prostitutes (93.0 per cent) contacted their customers while working on the street, with bars being the second most favoured site for these encounters.

4. The juvenile prostitutes typically relied upon unobtrusive means to indicate their availability to potential customers. These techniques included: frequenting areas known for prostitution; standing at street corners; walking slowly; and eye contacts and smiling.

5. Only one in 14 juvenile prostitutes (7.0 per cent) said that he or she usually initiated the contact with a trick. In a majority of these encounters,

the tricks either sought out the juvenile prostitute, or both the young prostitute and the trick simultaneously approached each other.

6. When tricks refused their offers, three in four juvenile prostitutes (74.2 per cent) said that under such circumstances their conduct was neither pressing nor persistent. The main reasons cited were that it was typically unnecessary to pursue tricks since there were many more customers from whom to choose.

7. About half of these youths (47.6 per cent) said that, at some time, they had propositioned a person who was not seeking the services of a prostitute. When this had occurred, most had backed off or had apologized.

8. Two-thirds of the juvenile prostitutes (63.8 per cent) said that they had seen persons who were not prostitutes propositioned by tricks. The reactions of these persons had ranged from being insulted and disgusted to fear and anger.

9. The sexual acts performed by juvenile prostitutes with tricks were performed in a wide variety of public and private locations. The principal sites were the tricks' vehicles, hotel or motel rooms, and apartments.

10. The juvenile prostitutes were requested to perform a wide range of sexual acts, the most common being "blow jobs" and a "straight lay". Four in five said that there were certain sexual acts that they were unwilling to perform.

11. Seven in 10 juvenile prostitutes (71.2 per cent) spent less than half an hour, on average, with each trick.

12. Three in five males (59.5 per cent) and nine in 10 females (91.7 per cent) reported their standard procedure was to be paid prior to engaging in sexual acts with tricks. Their average daily earnings were $189.38 (males, $140.25; females, $215.49).

13. About a quarter of the juvenile prostitutes (23.6 per cent) were frequent or heavy users of alcohol; over a third (37.6 per cent) either frequently used drugs or were addicted to these substances. Proportionately, more of the young males than the young females used one or both of these substances.

14. When they performed sexual activities with tricks, one in eight male juvenile prostitutes (11.9 per cent) and nine in 10 female juvenile prostitutes (90.3 per cent) usually used some form of contraception. A fifth of the males (19.0 per cent) and four in five females (82.1 per cent) required tricks to use condoms during intercourse.

15. Over two in three juvenile prostitutes said that they routinely obtained medical care. However, a substantial minority, slightly less than a third, did not do so.

16. Since they had started working as prostitutes on the street, about a third of the youths (35.8 per cent) had contracted gonorrhea and about one in eight syphilis (12.7 per cent). The prevalence of these conditions, particularly among young female prostitutes, is alarmingly high in light of the risks of their having serious long-term complications affecting their health.

17. About two-thirds of the juvenile prostitutes (63.3 per cent) said that they had been physically assaulted at least once since they had been working on the street. Their reported assailants included: tricks; other persons involved in street life; and police officers. Over two in five of the youths said that they had needed medical attention resulting from these assaults.

18. When they were children or adolescents, over a third of the juvenile prostitutes (37.1 per cent) had been involved in legal proceedings before family or social welfare courts.

19. Over two in five of the juvenile prostitutes (42.8 per cent) had been found delinquent before a juvenile court.

20. About one in seven (13.5 per cent) of the juvenile prostitutes had been charged with soliciting for the purpose of prostitution and about one in 10 (9.6 per cent) had been convicted for this offence.

21. Two in five youths (38.7 per cent) who had been arrested at some time while they had been working on the street reported that their names had been published in local newspapers.

22. On average, these youths had been charged with 1.3 offences other than for soliciting. Half (50.2 per cent) had been charged with property offences, one in four (24.9 per cent) with loitering, about one in five (18.3 per cent) with various sexual offences, about one in eight (11.8 per cent) with having assaulted another person, one in 12 (8.7 per cent) with offences involving the use or possession of alcohol and drugs, and about one in five (19.2 per cent) for an assortment of other offences.

23. A majority of the youths said that they would strongly discourage other young persons from becoming prostitutes.

24. Three in five youths (59.8 per cent) who were working on the street were unwilling to acknowledge that they were prostitutes and stated that they were working in some other occupation.

25. About three in five youths (57.2 per cent) said that within five years they envisaged themselves having a conventional job, making good money, being settled and living off the street. Few of the youths were taking definite steps to achieve their ambitions.

26. More than half of the youths (54.1 per cent) said that they believed young prostitutes could best be helped by the setting up of hostels or drop-in centres having a range of services tailored to meet their needs.

The ingrained pattern of exploitation, disease and violence in the daily lives of juvenile prostitutes is unmistakable from the Committee's research findings. These youths are the cast-offs of Canadian society. Many are early drop-outs from school and have run away from home at an early age. About two in five of these youths had been found delinquent before a juvenile court, and while few of them had been charged or convicted of soliciting, a substantial proportion had been charged with other offences. The findings leave no doubt that for many of these youths their work as prostitutes introduces them to a criminal way of life in which they become progressively more entangled.

They also face considerable risks of contracting serious diseases, of being severely physically injured and of being harshly exploited by pimps.

While most of these youths have at one time been in contact with social services or enforcement agencies, except for seeking assistance such as medical care which they deem essential to their continuing to work as prostitutes, few seek out other helping services. The programs which might assist them are largely mistrusted, regarded as useless, or are ignored.

The amelioration of the tragic plight of juvenile prostitutes lies, in the Committee's opinion, chiefly in the implementation of social rather than legal initiatives. We believe that young prostitutes can be helped by more effective social intervention and by the development of programs aimed at reintegrating them into the mainstream of society. However, such social initiatives are most frequently rendered useless because they are not sought out by these youths and because viable means of intervention are currently lacking.

There are no effective means either in federal or provincial legislation of holding these children and youths. There are no effective means of bringing these children and youths into situations where they can receive guidance. There are no effective means of stopping the demonstrated harms that these children and youths are bringing upon themselves. For these reasons, the Committee believes that the implementation of criminal sanctions against these children and youths must be made a legal possibility by creating an offence in order that social intervention can take place.

In reaching this conclusion, and reflecting divided opinions in the field, there was strong disagreement by some Members of the Committee that a criminal sanction against juvenile prostitutes was either desirable or likely to be effective, and indeed, a concern that such a prohibition would detract from the primary emphasis upon prevention, early identification and early intervention.

In recognizing these important concerns, there is no desire on the part of the Committee to affix a criminal label to any juvenile prostitute. The Committee concluded, however, that in order to bring these children and youths into situations where they can receive guidance and assistance, it is first necessary to hold them and the only effective means of doing this is through the criminal process. Accordingly, the Committee reluctantly concludes that it is necessary to have a specific criminal sanction prohibiting children and youths engaging in prostitution. This sanction is a complementary prohibition to that recommended by the Committee against the customers of juvenile prostitutes. Together, these sanctions would constitute a clear legislative commitment that juvenile prostitution has no place in Canadian society.

The Committee recommends that the *Criminal Code* be amended to provide that:

1. **Every young person who offers, provides, attempts or agrees to offer or provide for money or other consideration to engage in a sexual act with another person is guilty of a summary conviction offence.**

2. For the purpose of this section, "young person" means a person who is under 18 years of age.

Education is potentially the most effective tool for stemming the spread of juvenile prostitution. The Committee's findings leave no doubt about the emotional and physical harms, the risks and the privations associated with street life. The findings constitute a clear warning to any youth who is considering either running away or turning to prostitution. Elsewhere in the Report, the Committee has called for a national program of public education and health promotion as an essential means of affording better protection for sexually abused children. We also believe that there is an urgent need for this national program to focus upon the risks — physical, health, emotional and social — involved for youths who become prostitutes. It is essential that both parents or guardians and youths be fully informed about the actual conditions and risks associated with the street life of young prostitutes.

In conjunction with the national program of public education and health promotion (specified in Recommendation 2), **the Committee further recommends that special educational programs be developed drawing upon the findings of this Report documenting the conditions and risks associated with juvenile prostitution, and that these special educational programs be made available to parent-teacher associations, and to schools and by means of educational television.**

It is clear that no attempt to rehabilitate young prostitutes is likely to succeed unless it focusses attention on the need of these youths to alter their attitudes toward themselves and their way of living. Especially tailored helping programs are required having services designed to enhance the self-esteem and self-confidence of young prostitutes by imparting to them job or trade-related skills as well as conventional "life skills". Such programs, if successful, would also make it more financially feasible for these youths to get off the street. Programs having these objectives are vital prerequisites for the kind of action that is required to assist juvenile prostitutes to start a new life, one in which they have a perception of themselves as persons capable of living and working in a manner that is personally fulfilling, socially accepted and free of unacceptable risks to their health and safety.

Despite the difficulties involved, the Committee believes that government at all levels has the unmistakable obligation to take positive steps in order to accomplish these objectives.

The Committee recommends that: The Office of the Commissioner in conjunction with other branches of the Government of Canada establish support for special multi-disciplinary demonstration programs (child protection, police, education, medical and youth job training services) for five years (renewable) designed to reach and serve the needs of these youths, focussing upon: affording immediate protection; counselling; and education and job training.

References

Chapter 45: Working the Street

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[3] Williams, D. H. Suppression of Commercialized Prostitution in the City of Vancouver, *Journal of Social Hygiene*, 27: 364-72, 1941.

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Chapter 46

Tricks and Pimps

Prior to undertaking the National Juvenile Prostitution Survey, the Committee found no Canadian research concerning the customers of juvenile prostitutes or about pimps who exploit these youths. Since customers, or tricks, tend to be highly secretive about their use of prostitutes, the Committee concluded that it would have been futile to approach such persons on the street to elicit information from them. For the same reason and as well in order to avoid offending persons who had never purchased the services of a prostitute, the Committee did not seek to obtain this information by means of the National Population Survey.

The Committee was also concerned about the role played by pimps in the prostitution of children and youths. A pimp is defined in this Report as any person for whom a prostitute works and who regularly receives part or all of the prostitute's earnings. Beyond a number of acccounts in the case law, the Committee was unaware of any study for this country that had documented who these persons were who exploited children and youths. The Committee was aware from the outset that reliable information would be extremely difficult to obtain in this area and that a direct approach seeking to contact pimps by means of the youths whom they controlled was precluded because of the risks entailed for these young prostitutes.

The National Juvenile Prostitution Survey included a detailed series of questions concerning both tricks and pimps. The information is limited to the experience of the youths who participated in the survey. The information given in this chapter about tricks is based on the knowledge and subjective impressions of these youths about their customers. Prior to undertaking the survey, the Committee was advised that most female juvenile prostitutes would be reluctant to discuss openly their relationships with their pimps. While this prediction proved to be generally valid, nevertheless, some of these youths were frank and forthcoming in describing their working arrangements with pimps. In a number of instances, interviews were held with both young prostitutes and their pimps.

Despite the limitations concerning the scope and details of the information obtained about tricks and pimps in the National Juvenile Prostitution Survey,

the findings obtained afford a sufficient basis in the Committee's judgment to identify measures that are requisite in order to deter persons who use the sexual services of children and youths who are prostitutes and who exploit these young persons socially and economically.

Gender of Tricks

The vast majority (96.9 per cent) of the tricks regularly purchasing the services of juvenile prostitutes are males. Only one in 32 of the juvenile prostitutes (3.1 per cent; three males and four females) reported having a predominantly female clientele. However, half of the youths (50.2 per cent) said that they had been approached for their services on at least one occasion by a woman. This had occurred more frequently to male juvenile prostitutes (61.9 per cent) than to female juvenile prostitutes (43.4 per cent).

Table 46.1

Juvenile Prostitutes Who had been Approached for Their Services by Women

Number of Times Approached for Services by a Woman	Males		Females	
	Number	Per Cent	Number	Per Cent
1	21	25.0	20	13.8
2	6	7.1	9	6.2
3	7	8.3	8	5.5
4	4	4.8	7	4.8
5	2	2.4	3	2.1
6 and over	5	6.0	11	7.6
Several times	7	8.3	5	3.4
Never, not reported	32	38.1	82	56.6
TOTAL	84	100.0	145	100.0

National Juvenile Prostitution Survey.

Of the youths who had been approached by a woman, three in four (76.5 per cent) stated that the woman in question had propositioned them for herself. There was only a slight difference in this respect between male juvenile prostitutes (37 of 52 males, 71.2 per cent) and female juvenile prostitutes (51 of 63 females, 81.0 per cent). Five males and one female said that women had approached them for someone else, while eight boys and six girls said that the woman had wanted them to engage in group sex. One boy was asked by a female customer to put on a stag show at a women's shower, and another seven boys and eight girls said the female customers had wanted them both for themselves and to engage in group sex.

The Most Recent Trick

In order to obtain information on a uniform basis concerning the tricks of juvenile prostitutes, each youth was asked about his or her most recent trick. Eighteen boys (21.4 per cent) had approached the trick, while 63 boys (75.0 per cent) and 112 girls (77.2 per cent) said that the trick had approached them. One boy had contacted his trick by telephone. Almost two-fifths of the males (38.1 per cent), and slightly less than one-third of the females (30.3 per cent) stated that the trick had approached them on foot, whereas more than half of the boys (54.8 per cent) and about two-thirds of the girls (66.9 per cent) said that the customer had been in a vehicle. Two males and three females said that the contact between the trick and themselves had been made by telephone, and one boy said that he had gone to the trick's home, while one girl stated that her client had visited her home.

The youths were asked to estimate the approximate age of their last trick. To the extent that their estimates are accurate, then it would appear that the majority of the tricks (54.8 per cent of the boys' and 58.6 per cent of the girls' customers) were between 35 and 49. About a third of the tricks were between 20 and 34 and about one in 10 was age 50 or older.

Table 46.2
Estimated Age of the Most Recent Trick of Juvenile Prostitutes

Estimated Age of Most Recent Trick	Males		Females	
	Number	Per Cent	Number	Per Cent
20 – 24 years	4	4.8	9	6.2
25 – 29 years	8	9.5	19	13.1
30 – 34 years	15	17.9	16	11.0
35 – 39 years	23	27.4	36	24.8
40 – 44 years	13	15.5	28	19.3
45 – 49 years	10	11.9	21	14.5
50 – 54 years	9	10.7	14	9.7
Not Reported	2	2.4	2	1.4
TOTAL	84	100.1*	145	100.0

National Juvenile Prostitution Survey.

*Rounding error

More than three-fifths of the youths knew their last trick's marital status, two in five his occupation and almost half whether he had any children. These findings indicate that many tricks tend to discuss their personal lives with the prostitutes whose services they use, and as such, support the youths' claims that many of their clients are lonely or socially inadequate individuals who are seeking companionship.

Of the youths who knew the marital status of their last trick, 19 males (36.5 per cent) and 61 females (67.8 per cent) said that the trick was married. Presumably, most of the married clients of the male juvenile prostitutes were "in the closet", that is, they kept secret their sexual preference. Twenty-three males (44.2 per cent) and 18 females (20.0 per cent) who knew the trick's marital status stated that the trick was single; two males and six females said that the trick was separated, while six boys and three girls stated that the trick was divorced, and two girls stated that the customer was widowed. Among the youths who knew their last trick's marital status, it appears that the majority of the females' tricks were married, while almost as large a proportion of the males' customers were married as were single.

The majority of the youths who knew the occupation of their previous trick either stated that the trick held a service-type job or that he was a professional, a white collar worker or held a management position. A quarter of the males (25.0 per cent) and about half of the females (47.5 per cent) who knew the trick's occupation said that he held a service job, while half of the males (52.5 per cent) and a third of the females (32.8 per cent) stated that the trick was in management, a professional or a white collar worker. The findings suggest that the individuals who had most recently used the sexual services of juvenile prostitutes differed in terms of their social background in relation to whether they had sought the services of boys or girls. Proportionately more of the girls' tricks were blue collar or service workers while a higher proportion of the males' tricks were professionals, white collar workers or in management positions. Overall, **the findings indicate that the services of juvenile prostitutes had been sought out by persons from all walks of life.**

Two-thirds of the juvenile prostitutes (males, 65.5 per cent; females, 69.7 per cent) said that their most recent trick had been in a friendly or talkative mood. Another 10 males (11.9 per cent) and 22 females (15.2 per cent) said the trick had been shy or secretive. Six males and two females reported that the trick appeared to be mentally ill. Two boys and one girl said that their encounters with the trick had been a purely businesslike transaction. Two males and six females said their last trick had been verbally abusive, while one girl had been physically abused and robbed. One girl said that two tricks who could not speak English had had sex with her and another prostitute in a car. Another girl said that she was upset and crying, but that her trick had consoled her and made her feel better. One boy said that his most recent trick had spoken about other prostitutes, while another reported that the trick was scared since it was probably the first time that he had been with a prostitute. Another boy stated that he and his trick had liked each other and that the trick would probably become a regular customer. One boy said that his trick was "horny" and had talked only about sex, while still another stated that his customer was straightforward and blunt about what he had wanted.

Three in five of the youths (59.4 per cent) said that their last trick had not been using drugs or alcohol during their transaction. However, proportionately more of the tricks of young males than those of young females were reported to

have been using one or both of these substances. Nineteen males (22.6 per cent) and 30 females (20.7 per cent) said the trick had been drinking, while nine boys (10.7 per cent) and four girls (2.8 per cent) stated that their trick was drunk. A further seven boys (8.3 per cent) and three girls (2.1 per cent) said that their trick had been using drugs, and five girls (3.4 per cent) said that the trick had been "stoned" (i.e., heavily under the influence of drugs). Three males (3.6 per cent) and seven females (4.8 per cent) indicated that the trick had been using both alcohol and drugs.

Descriptions of Tricks

The juvenile prostitutes were asked to describe in their own words the tricks who typically sought their services.

Tricks of Male Juvenile Prostitutes

- Early 40s, businessmen.
- Wimpy men in the closet. Putting on a heterosexual front, married, with money, looking for an emotional relationship.
- Men over 30, generally married and in the closet. They have to pay for sex because they are unattractive.
- Men neglected by their wives or men who are in the closet and don't feel comfortable going into gay bars.
- Middle-aged, in the closet, married, lonely, and looking for sex with no relationships.
- Emotionally insecure, lonely, older, married, pressured to keep up their straight image on the job. In the closet gays.
- Fat old men.
- Older (middle-aged) men who have money, but have too little confidence to meet partners in bars. Lonely homosexuals in the closet.
- Men looking for little boys' penises to suck on.
- Middle-aged, married men making good money. Very insecure, in the closet. They feel more secure about getting sex by paying for it.
- Balding, fat, 50, with money. Usually in a car. Married with kids. In the closet.
- Rich faggots.
- Nice guys with weird sexual hang-ups.
- A gay who has not come out of the closet and wants a boy's penis.
- Men who pay money for sex, who get off on paying for it, or are in the closet and can't come out to the [gay] clubs to pick up men. Married, professional men.
- Desperate older men with no looks, but lots of money.

- Middle-aged, well-off, lonely. They are socially unattractive or think they are.
- Ugly, old, overweight. The kind of people you wouldn't want to have sex with. They pose as intellectuals and act as if they had an advantage over the hustlers.

Tricks of Female Juvenile Prostitutes

- Men who don't get enough sex at home from their wives. Older men, with money, wives and kids. The younger tricks try to rip me off and are more violent.
- Men who can't get blowjobs at home and want little girls to do it.
- Lonely men who cannot have successful sex lives without paying for it.
- Businessmen, 40 and older, usually in cars.
- Usually nice. Older, married. Their wives don't give them enough sex.
- They're nothing to me—I use them for what I want. They're looking for a bit of companionship, love. They want to be told they're special. Some rip you off. They're very horny.
- They want something different from home and want to know what a hooker is like. They're lonely, married and have kids and money.
- They're sexually desperate.
- Short, fat, balding and ugly. They're losers. They're older, married men. Some have brought their sons along.
- Older, married men with money, some lonely. They can't find a girl any other way.
- They're married and have kids and talk about them. They sometimes tell me, "you remind me of my daughter".
- Married, middle-class men. They don't like to go to hookers, but have to because their wives have hang-ups.
- Short, chubby middle-aged men who are lonely. They talk over their troubles with me.
- There are two kinds of tricks: the family man with a wife, kids, a business and money; and the dirty old man who is kinky and wants young girls.
- Overweight, middle-aged, gray-haired, smelly, paranoid.
- Middle-aged men in business suits who are lonely and need love.
- Scum, hard-up, mentally disturbed, liars. Old and fat, with money.
- Perverts who like to abuse women.
- Men who want blowjobs and cannot get them at home.
- Men looking for something they can't get at home, living out fantasies. They're insecure and believe that paying for sex makes them a man. They like to have a powertrip with women.
- Middle-aged men with problems at home who want to get laid and talk to you about their problems.

- Men who want to control women and tell them what to do.
- Jerks. Perverts who like to sleep with little girls.
- Nice, understanding people who have sexual problems in their marriages. They're middle-aged and have money.

Several trends emerge from these descriptions about the types of persons who patronize young prostitutes. A sizeable proportion of the customers of the boys and girls were middle-aged, married men who came from middle-class backgrounds. Many of these tricks had sexually unfulfilling home lives or went to prostitutes in order to engage in a wider variety of sex acts. The males typically characterized their tricks as gay men who were "in the closet" (i.e., publicly posing as heterosexuals) and who used young hustlers as a means to obtain sexual satisfaction without risking exposure of their homosexual tendencies. The male juvenile prostitutes described many of their tricks as lonely, insecure or socially inadequate men for whom a transaction with a prostitute represented one way of having a sexual encounter without fear of rejection.

Several girls said that their tricks used prostitutes as an outlet for their feelings of hostility and aggression towards women. Some suggested that their customers wanted to dominate women or to have sexual encounters in which their partner was completely submissive and prepared to submit to their whims. About one in eight of the tricks was reported to have a special sexual interest in children. The juvenile prostitutes' descriptions of their tricks indicate that most of them regard their clients either with hostility or as being pathetic, contemptible or disgusting individuals. The tricks were often portrayed as being physically unattractive persons with whom the young prostitutes found it distasteful and unpleasant to engage in sexual acts.

Criminal and Social Sanctions Against Customers

In the Committee's judgment, a separate criminal offence is needed to deter persons who seek out and use young prostitutes. Section 195.1 of the *Criminal Code* requires that an accused be "pressing or persistent" in his or her solicitations and that the solicitation occur in a "public place". While these requirements are relevant to the public nuisance aspect of prostitution, they are clearly irrelevant to society's more compelling interest in deterring and punishing the exploitation of young persons by way of prostitution. Furthermore, the substantial harms incurred by young persons who engage in prostitution are independent of whether a prospective customer actively solicits their services in a public or a private place. The Committee does not consider that adults who exploit the sexual vulnerability of young persons should be considered any less culpable because they agree to pay for the sexual act with a young person than if they were to sexually threaten or coerce a child without payment.

The tragic consequences of a life of prostitution for young persons are extensively documented in this Report. These serious harms justify the imposition of a specific criminal sanction against the customers of young prosti-

tutes. Depending on the age of the young person and the nature of the sexual act engaged in, the customer of a young prostitute could also be charged with one of the sexual offences against children in the *Criminal Code*.

The Committee recommends that the *Criminal Code* be amended to provide for a separate offence in the following terms:

1. **Every one who offers, provides, attempts or agrees to offer or provide, money or other consideration to a young person for the purpose of engaging in a sexual act with, against, or upon such young person, is guilty of an indictable offence and is liable to imprisonment for two years.**

2. **For the purpose of this section, "young person" means a person who is under 18 years of age.**

3. **It is no defence to a charge under this section that the accused believed the person to be 18 years of age or older.**

The Committee's research findings indicate that the clients of prostitutes pose at least an equal if not a greater public nuisance than do the prostitutes themselves. While many tricks attempt to solicit the services of young prostitutes from within the confines of a motor vehicle, the law, as presently constituted, does not take this fact into account. In light of its research findings, the Committee endorses the legislative proposals of the *Criminal Law Reform Act, 1984* (Bill C-19) which would make the "soliciting" offence in section 195.1 applicable to tricks as well as to prostitutes and would widen the definition of "public place" to include a motor vehicle located in or on a public place.

In addition to the imposition of criminal sanctions against the customers of juvenile prostitutes, the Committee believes that social sanctions must be invoked as a powerful means of deterring persons who sexually exploit young persons by means of prostitution. The information given to the Committee by these youths leaves no doubt that most of their customers would not wish to have their identities known publicly as persons who had used the services of juvenile prostitutes.

Legal provisions are available which permit the public identification of persons who are convicted of soliciting the services of young prostitutes. However, on the basis of its extensive research, (Chapter 22, *Publication of Victims' Names*), the Committee found that in practice while the names of persons convicted of other crimes, such as robbery or theft, were given prominence in the media, this was seldom done in relation to persons convicted of soliciting prostitutes. These accounts in the press, for instance, typically only report that a number of persons who remain unidentified were found on the premises of a bawdy-house.

The Committee believes that the publishing of the names of persons convicted of soliciting young prostitutes would serve as a contributory deterrent to persons inclined to seek the sexual services of juvenile prostitutes. The pros-

pect of public exposure and humiliation and the resultant loss of reputation, family, friends and even, in some instances, of business, would suffice in many instances to dissuade these persons from availing themselves of the sexual services of young prostitutes.

The Committee recommends that the Office of the Commissioner in conjunction with the national and provincial associations for the public media mount a program of giving prominent publicity to the names of persons convicted of soliciting juvenile prostitutes who are under age 18.

Fear of Disclosing Information about Pimps

The Committee's research indicates that the pimps who are involved with juveniles are exclusively males and that they only control female prostitutes. While a few male juvenile prostitutes stated that they had worked for pimps, the working arrangements which they described did not accord with the definition of pimping adopted in this study. The young males who said that they had worked with pimps had either provided escort services for some of their customers, or in some instances, they had loaned or given money to tricks who were their homosexual lovers. There is no evidence in their accounts that the youths in question had been exploited which is the essential attribute of the vicious control exercised by pimps over female juvenile prostitutes.

The clear reluctance of many young girls to talk about, or even to admit the existence of, their pimps is largely attributable to their fear of these violent and often sadistic persons who wield commanding power over their lives. Most of these young prostitutes believe, with justification, that they will be physically abused and harshly punished if they displease their pimps. The Committee recognized that receiving potentially incriminating information from young female prostitutes would have been a certain way for the girls who provided it to have aroused the ire of their pimps, particularly if the information divulged had later been used as evidence against the pimps. For these reasons, while most of the female juvenile prostitutes were initially defensive or evasive when they were asked about their pimps, many of them, however, trusted the assurance of confidentiality given by the Committee and provided valuable information about who their pimps were and the nature of their working arrangements with them.

Many girls who work on the streets believe that a prostitute who gives evidence against a pimp is almost certain to be murdered, if not by her own pimp, then by his fellow pimps. These murders are purported to be extraordinarily brutal and the prostitutes claim that they are accomplished by severe beatings of head and face. Another palpable fear of female prostitutes which suffices to dissuade many of them from giving information about their pimps is that of being ostracized by the other prostitutes in whose company they work. Furthermore, the Committee's survey indicates that many of the young prostitutes

either were "in love" with their pimps, or were psychologically dependent upon them to such an extent that they could not conceive of functioning without them. As a result, many girls adopted a highly protective attitude toward their pimps and were unwilling to divulge information which might have proved damaging to them, or which portrayed them in a negative light.

The Pimps' Regimen

On the basis of the findings of the National Juvenile Prostitution Survey, it appears that female juvenile prostitutes who are working on the streets of Canadian cities are seldom controlled by large-scale, highly organized prostitution rings. Although few such rings were encountered in the study, it is recalled that the findings were obtained from the most readily visible group of juvenile prostitutes, namely, those who were working on the streets. The Committee's findings indicate that generally a pimp either worked with one girl (38.2 per cent) or had a small number of girls in his employ (52.7 per cent). Information was not available for 9.1 per cent of the girls in the survey who said that they had worked with pimps.

In several large Canadian cities, it is difficult for a girl to work on the street without a pimp, not because pimps perform any vital function for prostitutes, but rather because they actively recruit or harass any girl who attempts to work independently. Among the prostitutes, themselves, it was rumoured to be necessary to have a pimp to provide some ill-defined form of protection, but this "protection" appeared to amount to little more than the warding off of the recruitment efforts by other pimps. Pimps generally did not solicit clients for their girls and did not help them to negotiate with tricks. As a rule, these functions were performed by the prostitutes themselves. Once a pimp had formed an association with a girl, he was likely to supply her with drugs in order to maintain her dependence upon him. (One girl who was interviewed announced that she intended to work without a pimp; a short time later, a pimp who had recently been harassing her broke into her room and forcibly injected her with heroin. Soon afterwards, she was addicted and working for him). Some areas of the cities in which the Committee conducted the survey were almost entirely dominated by pimps; in these areas, it was a virtual impossibility for a prostitute to work independently.

The regimen of the pimps is characterized alternately by extremes of affection and brutality. Although beatings and other forms of physical abuse and emotional degradation and humiliation were common, many girls stated that they loved their pimps and that their pimps loved them.

Few of the prostitutes thought of their pimps as pimps or referred to them in this manner. Rather, they described their pimps as boyfriends, lovers or fiancees, and by so doing, they refused to admit to themselves that they were in fact working for pimps. The girls thought of pimps as men who forced prosti-

tutes to work for them when they were sick, who took all of their money from them and who beat them regularly. Girls who voluntarily gave their earnings to their pimps, who were allowed to recuperate when they were ill, and who were only beaten occasionally were thereby able to rationalize that they were not working for real pimps, but that they were different from other prostitutes because their "boyfriends" loved them, and were not merely interested in their earnings. By refusing to admit to themselves that they worked for pimps, the girls were able to rationalize that they were not like other girls who worked on the streets who were "sluts" or "whores".

In contrast, the attitude evinced by the pimps towards the girls working for them frequently appeared to be one of unbridled contempt. The prostitute was regarded and treated as stupid, weak and a natural slave to her pimp. One girl stated that her pimp often told her that "Man is the ruler, woman the ruled". This attitude of contempt was openly communicated to the prostitutes and was inculcated by them, reinforcing their poor estimation of themselves. A few prostitutes who were interviewed in the presence of their pimps made no objection to insulting interjections made by the pimps. By cultivating the young prostitute's feelings of worthlessness, stupidity and inability to accomplish anything for herself, the pimp enhanced the girl's vulnerability. The girl was made to feel that she needed "her man" because she was incapable of taking care of herself. She also came to see herself as lucky to have her pimp, even though he may have abused her, because no one else would bother with someone as worthless as herself.

Generally, a prostitute turned over all or most of her earnings to her pimp. Failure to render an accurate account of the evening's income was usually a transgression of sufficient gravity to warrant a severe beating. Often pimps set quotas for their girls. A prostitute who was unable to do sufficient business to meet the quota risked violence at the hands of her pimp. The Committee's researchers found that most street prostitutes seldom actively propositioned prospective clients except at the end of a working night on which they had yet to fulfill their quotas; only then were they desperate enough in order to find tricks that they risked creating a nuisance and drawing police attention to themselves.

After the prostitute had turned her earnings over to her pimp, it was usual for the pimp to return a small sum of money to her to be spent on food, cigarettes, prophylactics or clothes. Considering the earning potential of a young prostitute who worked the street on a regular basis, it is evident that a pimp was able to reap a substantial income by living on the avails of his girl's professional activities. However, few pimps appeared to be wealthy. Instead, many ran through their girls' incomes by gambling, buying drugs and spending impulsively on luxury items. The money obtained was seldom used or invested for the benefit of the young prostitutes who took the risks to earn it.

The Committee's research indicates that females became far more locked into the life of street prostitution than males who worked on the street, and

that this difference was largely due to the role played by pimps. While a male prostitute's career typically ended by the time he reached his early twenties (i.e., by the time he lost his youthful appearance and ceased to appeal to his clientele), a number of female street prostitutes were encountered in the course of the survey who were in their twenties, thirties and even their forties. As these women became older and less capable of competing for tricks with juvenile prostitutes, they were forced by economic necessity to move into seedier, more dangerous streets, away from the areas where the younger girls prostituted themselves, and to charge lower prices for their services. The inability of these women to break away from a lifestyle which, as time passed, had become less exciting and progressively more destructive, is attributable in part to their continued dependency upon their pimps.

The Committee found that male and female juvenile prostitutes tended to have somewhat different working schedules. It was observed, for instance, that a different group of males would be working on the street from one week to the next, while many of the same girls could be found working in their usual locations over fairly extended periods of time. The explanation for this difference appears to be that male prostitutes were independent, and tended to get off the street or to get temporary jobs whenever they became disenchanted with selling their sexual services. The females, in contrast, were bound to the street by their pimps, their need to meet quotas and the feelings of love, fear, dependency and helplessness that their pimps had systematically instilled in them. The Committee's research indicates that while most young females who engaged in prostitution had initially found their way onto the street by themselves, it was the pimps who kept them there.

These relationships, however, between particular prostitutes and pimps were not always durable. Many of the girls had been involved with more than one pimp. The process of going from one pimp to another may be likened to that of finding a new boyfriend for ordinary adolescent girls. In some instances, a girl may have arranged to leave her pimp by paying him a sum of money. A girl who wished to leave her pimp was likely to have little difficulty in slipping away during her work hours, since most female prostitutes were not closely scrutinized by their pimps while they worked on the street. For most female prostitutes, the act of leaving a pimp posed less of a problem than becoming psychologically prepared to leave. Many pimps regularly threatened their girls with terrible punishments if they attempted to run away. A girl may have feared that if she left her pimp, he would follow her, find her, and subject her to brutal punishment before bringing her back to work for him. For most girls, returning home was not a viable option either because of the prospect of parental rejection or because they had originally started to work on the street due to conditions that they had felt were intolerable at home. In the absence of a safe place to run to, many girls who might otherwise have left their pimps felt constrained to continue working for them.

A number of the young female prostitutes had become pregnant. At the urgings of their pimps, most of them had continued to work on the streets

almost until they came to term (or, to use street terminology, until they "drop the kid"). Prostitutes who were pregnant insisted that their pimps were the fathers, even though they often had no way of knowing this to be the case, since many of them, when working, did not use any form of contraception with any consistency. A number of pregnant girls stated that they intended to retire from prostitution as soon as their babies were born. These girls anticipated that they and their babies would then be cared for by their pimps.

Some of the young female prostitutes had been drawn into criminal activities through their association with pimps. Usually, the involvement of the girl in the given offence was subsidiary to that of the pimp, as for example, where a prostitute had acted as a lookout while her pimp had conducted a drug deal. Typically, the pimp was the sole beneficiary of these unlawful transactions. The girl either was given no share in the proceeds of the offence or merely received some token remuneration, even though she had placed herself at risk of criminal sanction. Refusal to assist the pimp would undoubtedly result in beatings or some more severe form of punishment.

In the Committee's judgment, the relationship between young prostitutes and pimps encompasses one of the most severe forms of the abuse of children and youths, sexual or otherwise, that currently occurs in Canadian society. The relationship is based on two forms of ruthless exploitation: psychological and economic. The pimp exploits and cultivates the prostitute's vulnerabilities—her low self-esteem, her feelings of helplessness, her loneliness on the street and her need for love and protection. These weaknesses are the fetters with which the pimp binds the girl to him and keeps her on the street. Economically, pimps exploit prostitutes by drawing them into a form of virtual slave labour, or at least into a relationship in which one party, the pimp, provides a service whose value is vastly outweighed by the amount which the other party, the prostitute, is required to pay for it. The cost to the prostitute of working for a pimp goes far beyond the earnings that she gives him; it amounts to the girl's forfeiture of her future. Opportunities to obtain a better education, to become free of drug and alcohol addiction, to sort out emotional problems, to return to a normal lifestyle and to enter into healthy, caring relationships, are seriously jeopardized or permanently destroyed. The relationship between juvenile prostitutes and pimps is parasitic and life-destroying. In the Committee's judgment, it must be viewed as a problem of the utmost gravity. It must be stopped.

Profile of Pimps

Of the 145 female juvenile prostitutes from whom information was obtained, a small number was willing to admit that they were currently working for pimps, more were prepared to describe pimps for whom they had previously worked, and over three in four were well informed about pimps and the nature of the working arrangements between them and the prostitutes whom they controlled.

Female Juvenile Prostitutes' Relations with Pimps	Females	
	Number (n=145)	Non-Accum. %
Currently working for a pimp	15	10.3
Previously worked for pimp	55	37.9
Knowledge of working arrangements between pimps and prostitutes	113	77.9

Only about one in 10 girls was prepared to admit that she was working for a pimp when the survey was conducted. When asked if they had ever worked for a pimp, over a third (37.9 per cent) were willing to report that they had, and of this group of 55 girls, 52 immediately answered this question while an additional three girls subsequently provided descriptions of pimps for whom they had previously worked.

On the basis of its contacts with juvenile prostitutes, the Committee considers that the reported prevalence of pimping sharply under-represents the true extent to which the lives of these girls are controlled by pimps. Many of these girls were afraid of their pimps; some had been brutally beaten by them. Except for young girls who are just starting to engage in "the life" on the street by themselves, the Committee believes that, of those who have engaged in prostitution for even a short period, a more accurate estimate of the prevalence of pimping is that between half and three-quarters of female juvenile prostitutes were being exploited by this means.

Of the girls who were willing to admit that they had worked for a pimp, two-thirds (63.5 per cent) had worked for one pimp, about one in six (15.4 per cent) had worked for two pimps, and about one in seven (13.5 per cent) had worked for three pimps. Three girls said that they had been employed by four pimps, while one claimed that at different times she had worked for eight pimps.

The average age of the pimps was 24.7 years. About one in seven (14.8 per cent) was 20 years-old or younger and about an equal proportion was age 30 or older.

The majority of the pimps (70.9 per cent) were single, while two were married, one was separated, four were divorced, one was living in a common-law arrangement and two were living with someone. The marital status of six was unknown. In describing the occupations of the pimps, four girls said that their pimps were unemployed, seven reported that the pimp had some sort of service job, five said that he was a blue collar worker or manual labourer, one noted that the pimp was a hustler himself, and 33 (60.0 per cent) stated that the man with whom they worked was a full-time pimp. Information was not given concerning the employment status of five pimps.

Age of Pimp	Number	Per Cent
16	1	1.8
17	1	1.8
19	1	1.8
20	5	9.1
21	4	7.3
22	3	5.5
23	7	12.7
24	3	5.5
25	10	18.2
26	3	5.5
27	5	9.1
28	4	7.3
30	4	7.3
32	1	1.8
35	1	1.8
37	1	1.8
Not reported	1	1.8
TOTAL	55	100.1*

*Rounding error

Information was only reported about the level of education of three in five pimps (61.8 per cent). Of those for whom this information was available, about two in five (38.2 per cent) either had had some primary grade schooling or had reached the junior high school level, less than a third (29.4 per cent) had attended but not completed high school, about a quarter (26.5 per cent) had finished high school, and two had had some post-secondary education (5.9 per cent). These incomplete findings generally accord those concerning the pimps' employment status. Most of the pimps were men in their mid-twenties, were poorly educated, and few had held full-time conventional types of employment. Only one in nine (10.9 per cent) was reported to have been working at a full-time job (other than pimping) and about one in five (21.8 per cent) had some form of part-time work.

Over two in three of the pimps (67.3 per cent) were living mainly or completely on the avails of prostitution. The girls' descriptions of these men who were then or had previously controlled their lives reveal a wide range of emotional reactions with which they viewed them. Despite some of their positive comments about their pimps, as the findings presented later in this chapter clearly show, many of these men were violent and vicious individuals who physically coerced the girls whose lives they dominated.

- "Streetwise, charming, a good lover."
- "Good-looking, good in bed, sensitive, a sweet talker."
- "He was kind, yet cold and egotistical."
- "He is strong, tough and cute."
- "He is tall, dark and handsome and he loves me."
- "Nice guy."
- "Mentally lazy, but decent, not abusive."
- "He expects me to be true to him."
- "Handsome, strong, vicious."
- "Affectionate, fun to be with, sweet, good-looking."
- "Fair, a hard worker. He bosses me somewhat."
- "A good-looking, gentle, handsome man who is generous with others and is always laughing."
- "An average guy."
- "A good-looking biker; low-key, but I wouldn't want to anger him."
- "Attractive, strong-looking and strong-willed."
- "Fast-talking, funny; he talks very softly."
- "Good-looking, basically kind to me. He had kind eyes but a cold face. I never knew his feelings. I saw him throw other girls around, but never me."
- "An asshole."
- "Ugly and sick. He should be shot."
- "Had a bad temper, drank too much and did too many drugs."
- "A bastard. He enjoyed hurting people."
- "A prick, a dope addict. He thought only of money and drugs."
- "Forceful; he beat me like an animal."
- "Very dominant. He has to have his own way, which I usually give in to."
- "Schizophrenic, violent. He has an extensive criminal record."

Initial Contacts

Twenty-four girls (43.6 per cent) stated that they had first met their current or previous pimp by being approached by him. Another five girls (9.1 per cent) said that they had approached the pimp. As noted previously, some young prostitutes may seek to work for pimps because it is widely believed by girls working on the street that they need a man to protect and look after them. About half of the girls (47.3 per cent) were first introduced to their pimps by

other persons, including a relative of the pimp, a neighbour, a friend, other prostitutes, another pimp, a sister and an acquaintance. One girl said that she had first met her pimp when both had been staying in the same group home. Another girl stated that she had applied for a job in a bar advertised in a newspaper, only to discover that the advertisement had been placed by a ring of pimps.

Of the 55 female juvenile prostitutes who were willing to discuss their current or previous pimps, 43 (78.2 per cent) said that they had been strongly attracted to the pimp when they had first met him. Their reasons included:

- He befriended the girl.
- He offered the girl a place to stay.
- He offered the girl clothes or meals.
- The girl was physically or sexually attracted to him.
- He was a nice guy.
- He was a very strong person upon whom the girl felt she could depend and with whom she believed she could feel secure.
- There was no one else to turn to.
- He was "a big name" on the street and the girl felt she could use him.
- "He was taboo, black, and I heard they love well".
- He promised the girl drugs.
- "He said he needed me".

Fourteen girls (25.5 per cent) stated that their pimps had abused, threatened or beaten them soon after their first meeting. The details of these incidents are:

- The pimp threatened to break girl's arm.
- The pimp grabbed the girl and frightened her.
- The girl was drugged, gang raped and was told afterwards that she had been sold.
- The pimp told the girl that she was pretty and if she didn't want her face smashed in, she had better work for him.
- The pimp told the girl that if she didn't work for him, he would make sure that she never worked again.
- The pimp struck girl.
- The pimp transacted a drug deal with the girl and then threatened her with a gun.
- The pimp threatened to send other prostitutes out against her.

Twenty-nine girls (52.7 per cent) stated that after their initial contacts with these men, the pimps had promptly put them to work on the street. At this time, 19 girls (34.5 per cent) had moved in with the pimp, while in three

instances the pimp had moved in with the girl. When they were interviewed, 11 girls said that they were living with their pimps.

When they were asked why they worked for pimps, the girls' replies reveal a complex mixture of emotions involving love and fear. The reasons most frequently cited (multiple replies were given) were that: the girl loved the pimp (43.6 per cent); the pimp loved her (25.5 per cent); he beat or threatened to beat her (47.3 per cent); and he had threatened or attempted to kill her (20.0 per cent). The other reasons given by these girls included:

- The pimp needed the money.
- The pimp was unable to get a job.
- The pimp was in the process of getting a job.
- The pimp was coming into money eventually and the girl believed he would share it with her.
- The girl and her pimp were engaged.
- The girl and her pimp were married.
- The girl was pregnant with the pimp's baby.
- To pay back money that the pimp had lent the girl.
- "He treated me well; he promised to travel with me."
- To avoid being harassed by other pimps.
- "He protected me."
- "He gets me drugs."
- "I needed someone to understand me."
- "He provided protection from other prostitutes."
- The girl was being chased by a motorcycle gang and felt that the pimp could offer her protection.
- The pimp occasionally arranged tricks for the girl.
- "I was doing it for 'us'."
- The pimp threatened to tell the girl's parents that she was a prostitute.

Living on the Avails of Prostitution

Despite their firm control of the girls' lives, few pimps were actively involved in directly procuring clients for the young prostitutes who worked for them. Only 10 girls said that their pimps had ever solicited clients for them. Sixteen girls stated that their pimps acted as bodyguards for them and 11 said that their pimps met them for coffee breaks. Ten girls reported that their pimps only met them to pick up money and 19 girls said that their pimps stayed away from the areas where they worked. One girl noted that her pimp hired "recruiters" to observe his girls on the street and report back to him; four girls stated that, while working, they identified themselves to their customers by mentioning their pimps' names, in order to indicate for whom they were working.

The daily quotas set by the pimps for their girls' earnings are listed in Table 46.3. As noted in Chapter 45, *Working on the Street*, the amount of time spent by girls working as prostitutes on the street varied considerably. The information obtained concerning the quotas set by pimps given by 32 girls indicates that on weekdays they were expected to earn an average of about $225 and on weekends about $256. When the number of girls who had quotas established by pimps is substracted from all female juvenile prostitutes who reported their average daily gross earnings, the former potentially would have averaged $225 on weekdays while the latter (a significant proportion of whom may also have worked for pimps) averaged about $212. An almost equal proportion in each group (female juvenile prostitutes having quotas set by pimps, 59.4 per cent; other female juvenile prostitutes, 58.4 per cent) would have earned less than the daily average for all female juvenile prostitutes of $215.49.

Table 46.3

Earnings' Quotas Set for Female Juvenile Prostitutes by Their Pimps

Earnings' Quotas Set by Pimps for Female Juvenile Prostitutes	Weekdays		Weekends	
	Number	Per Cent	Number	Per Cent
100.00	8	25.0	6	18.8
150.00	3	9.4	3	9.4
200.00	8	25.0	6	18.8
250.00	4	12.5	4	12.5
300.00	5	15.6	5	15.6
350.00	—	—	1	3.1
400.00	2	6.3	4	12.5
500.00	1	3.1	2	6.3
550.00	1	3.1	1	3.1
TOTAL	32	100.0	32	100.1*

National Juvenile Prostitution Survey. Of the 55 female juvenile prostitutes who were working or had worked for pimps, 32 provided information concerning earnings' quotas that had been established for them.

*Rounding error

An indication of the potential amount of money that a pimp may reap from a young prostitute can be estimated by considering a hypothetical case in which a girl worked five days a week (three weekdays, Saturday and Sunday) for 45 weeks each year. On the basis of the average quotas set by the pimps, the girl's annual earnings would be about $53,578.

Of the 55 girls who were working for a pimp or had worked for one in the past, 40 (72.7 per cent) stated that they turned over all of their earnings to

these men. Two girls said that they turned over three-quarters of their earnings, two said they gave up 70 per cent, and eight said that they gave their pimps half of the money that they earned. One girl stated that her pimp took none of her earnings.

Table 46.4

Amount of Money Given to Female Juvenile Prostitutes on a Daily Basis by Their Pimps

Amount of Money Given by Pimps to Female Juvenile Prostitutes ($)	Female Juvenile Prostitutes	
	Number	Per Cent
0	9	16.4
1	1	1.8
2	1	1.8
5	7	12.7
10	4	7.3
20	10	18.2
25	5	9.1
30	2	3.6
35	1	1.8
40	1	1.8
45	1	1.8
50	2	3.6
75	1	1.8
80	1	1.8
100 and over	4	7.3
Not reported	5	9.1
TOTAL	55	99.9*

National Juvenile Prostitution Survey.

*Rounding error

There is no doubt that pimping may be a highly lucrative line of work for these men who were typically poorly educated and who had had little conventional work experience. On average, the pimps paid back to the young prostitutes $33.76 each day. If the case of the hypothetical female juvenile prostitute who worked five days a week for 45 weeks is again taken as an example, then on an annual basis, she would have received about $7596, or 14.2 per cent, of what she had earned by selling her sexual services. The pimp would have retained $45,982, and this total can be multiplied by the number of young females whom he controlled in his "stable".

The uses to which these females put the money given them by their pimps were generally quite modest. The items that they most frequently claimed they used this money to purchase were coffee, tea or soft drinks, food, condoms, cigarettes and clothes. By contrast, the young girls reported that their pimps spent the money that they turned over to them on drugs, liquor, gambling, jewellery, cars, household goods, and clothes, either for themselves or for their girls.

About two-thirds of the 55 girls (65.5 per cent) said that they met their pimps once each working evening in order to hand over their earnings, although a few met their pimps twice or several times each evening for this purpose. These meetings occurred in a variety of locations including downtown streets, the pimp's home, bars, coffee or donut shops, and at subway stops. Two girls said that their pimps collected their earnings after they had turned every second trick, while one said her pimp met her every half hour, and another stated that she telephoned her pimp to pick up the money. One girl said that she simply supported her pimp and paid his bills, rather than meeting him on a regular basis to give him her earnings.

Pimping and Violence

When they were asked if they had ever been beaten by their pimps, 44 girls said that they had, 10 had not been beaten and one said that her pimp had threatened to beat her. Thirteen girls said that their pimps had beaten them regularly, 21 stated that they were beaten by their pimps on an occasional basis, four said they were beaten only once and two stated that their pimps only beat them when they deserved it.

Despite the fact that four in five (80.0 per cent) of the 55 girls who had worked with pimps had been beaten by them, about half of these young prostitutes (47.3 per cent) said that they were proud to be working with these individuals. About an equal proportion (45.5 per cent) held strong negative views about their pimps and four girls did not reply to this question.

The girls who were proud of their pimps explained that their feelings stemmed from the "kindness", understanding and "psychological support" that their pimps had given them. Speaking of the time when she had first became involved with her pimp, one girl said, "At that time, he made me feel what I was doing was important". Another stated, "He treated me special, like a princess, until I threatened to leave him". One girl said she was proud of her pimp because he was physically attractive. Others took pride in the fact that their pimps were well known and respected on the street. Two girls stated that they were afraid of their pimps, while another simply stated that "pimps are all lowlife". One girl's comments captured the essence of the fear and the sense of dependency felt by many of these young prostitutes. "It's not a matter of being proud; you have to work for a man to be able to work on the street."

Table 46.5

Reasons Why Female Juvenile Prostitutes had been Beaten by Their Pimps

Reasons Why Female Juvenile Prostitutes had been Beaten by Pimps	Female Juvenile Prostitutes	
	Number (n=55)	Non-Accum. %
Holding back money	11	20.0
Attempting to leave pimp	12	21.8
Refusing to work	7	12.7
Talking to police	3	5.4
Pimp felt like beating the girl	14	25.5
Failure to meet quota	5	9.1
Girl had been disrespectful	1	1.8
Jealousy	4	7.3
Pimp was drunk	2	
Argument over drugs	1	1.8
Girl had said something pimp did not like	3	3.6
Girl had listened to gossip about pimp	1	1.8
General disobedience	1	1.8
Because group of pimps were fighting over the girl as property	1	1.8
Girl had lied to pimp	1	1.8
Girl had talked about pimp in public	1	1.8

National Juvenile Prostitution Survey.

The young girls were asked two questions concerning the worst situation that they knew of involving a prostitute and her pimp. In the first question, the girls were asked to describe the worst situation in which they had ever been involved with their pimps. The second question asked the girls to describe the worst incident of which they had ever heard involving a prostitute and her pimp.

Worst Personal Experiences with Pimps

- The girl was "slapped around" for minor disobedience.
- The girl's face was severely beaten, resulting in bruising and broken bones.
- The girl's head was "split open" with a belt buckle; the girl was then beaten with a coat hanger heated on a stove for not coming when her pimp called her.

- The girl was beaten in a public place.
- The pimp jumped on the girl's face, breaking her nose.
- The pimp attempted to run the girl down in his car.
- The pimp attempted to strangle the girl; she lost consciousness.
- The pimp beat the girl with a baseball bat and forced her out of house in the middle of the night while she was only wearing pajamas.
- The girl was beaten by four male friends of the pimp who burned her breasts, choked her and placed a gun at her head.
- The pimp heated a wire clothes hanger on a stove, beat the girl with it and burned the soles of her feet.
- The pimp raped the girl.
- The girl stabbed pimp in the back in self-defence.
- The pimp got the girl's friend pregnant.
- The pimp threw the girl and her belongings out in the rain.
- The pimp threw the girl against a wall.
- The pimp threw knives at the girl, forced her to swallow his urine and defecated in her mouth.
- The pimp punched the girl in the mouth.
- The pimp pulled a knife and threatened to cut the girl's throat.
- When the girl lost $400, her pimp beat her for two hours with his fists and boots while she sat in a chair. The pimp then slashed the girl's wrists. The girl was hospitalized for between three and four months.

Worst Known Incidents Involving Pimps

A total of 113 of the 145 female juvenile prostitutes provided descriptions concerning the worst incident about which they had heard involving a prostitute and her pimp. Their replies included:

- The prostitute was murdered.
- The prostitute was beaten to death.
- The prostitute was shot to death.
- The prostitute was stabbed to death.
- The prostitute was killed by overdose of a drug forcibly injected.
- The prostitute was beaten with a heated clothes hanger.
- The prostitute was severely beaten by her pimp, resulting in broken bones; the girl was hospitalized.
- The prostitute received a beating from her pimp which resulted in a bruised face and black eyes.
- The prostitute was badly slashed with a knife by her pimp.
- The prostitute was beaten with a baseball bat by her pimp.
- The prostitute was beaten by her pimp in a public place.

- The pimp made the prostitute stand naked on a bridge during the winter.
- The prostitute had foreign objects forced into her vagina.
- The pimp maintained prostitute's drug addiction in order to keep her working.
- The pimp "hit up" (i.e., injected) the prostitute with battery acid.
- The prostitute was blinded after pimp threw gasoline on her and set her on fire.
- The pimp cut the prostitute's baby "out of her stomach".
- The pimp raped and stabbed the prostitute.
- The pimp forced a hot curling iron into the prostitute's vagina.
- The pimp, sitting in car, held the prostitute's arm as he drove around a parking lot, dragging her over the concrete pavement.
- The prostitute was beaten with a belt by her pimp.
- The pimp beat the prostitute with a gun and "split open" her head.
- The pimp pushed the prostitute in front of an oncoming subway train.
- The pimp beat the prostitute "black and blue" and chopped off her hair with a machete.
- The pimp gave the prostitute a beating and dragged her around by the hair; this resulted in a broken nose and collar bone.
- The pimp inflicted cigarette burns on the prostitute's face.
- The pimp locked the prostitute in a rat-infested cellar.
- The pimp held the prostitute's head under water until she lost consciousness.
- The pimp gave the prostitute a beating that blinded her in one eye.

The multiple reasons cited by the female juvenile prostitutes concerning why they had been assaulted, and in some instances, severely injured by their pimps indicate the nature of the vicious coercion that is inherent in the pimp — prostitute relationship. The brutality of pimps, often calculated, sometimes irrational and sadistic, emerges from the finding that some pimps had threatened to beat their girls for holding back money, attempting to leave them, or failing to meet quotas, while others had become violent simply because they felt like beating the girls. The pimps' domination of the girls who worked for them is revealed by the fact that in some instances general disobedience, disrespect or saying something that the pimp did not like constituted sufficient provocation to warrant threats or actual beatings.

Strengthening Criminal Sanctions against Pimps

The role played by pimps in introducing and coercing young females into a life of prostitution, and of locking them into this life by means of drugs, violence, and threats of violence, is apparent from the Committee's research. In the Committee's opinion, the parasitic relationship between pimps and the

young prostitutes in their employ is an intolerable form of child abuse. The pimp cultivates and exploits the prostitute's vulnerabilities — her low self-esteem, her loneliness on the street and her need for love and protection. The oppressive social environment in which young prostitutes are compelled to work, and which the pimp actively engenders, robs these young persons of their human dignity, and of opportunities for pursuing a more healthful and constructive way of life. In the Committee's view, the response of the criminal law to this egregious exploitation of the young must be certain and severe.

The Committee's research has unearthed a number of social facts about juvenile prostitution which can serve as a basis for strengthening the protection afforded to young persons by the offences of "procuring" and "living on the avails of prostitution" in section 195 of the *Criminal Code*. Although some of the procuring offences in section 195 apply only to the procuring of a person to have illicit sexual intercourse with another person, the Committee's research reveals that the act of sexual intercourse is only one of many sexual acts which young prostitutes are procured to perform. The Committee recommends that section 195 of the *Criminal Code* be amended accordingly.

Further, in light of the Committee's finding that some pimps have only one prostitute working for them (and, in many cases, living with them), the Committee recommends that the presumption in section 195(2) be widened to provide that evidence that a person lives with or is habitually in the company of a prostitute or prostitutes is, in the absence of evidence to the contrary, proof that the person lives on the avails of prostitution. These reforms would materially strengthen the impact of the *Criminal Code* in this context and would better correspond to the modern realities of juvenile prostitution in Canada.

In the Committee's judgment, the limitation period for prosecution in section 195(4) of the *Criminal Code*, and the corroboration requirement relating to the offences of "procuring" in section 195(3) of the *Criminal Code*, are neither necessary nor appropriate in the modern context of juvenile prostitution. The Committee sees no reason for requiring a prosecution under section 195 to be commenced within one year after the time the offence is alleged to have been committed. Limitation periods for the prosecution of indictable offences are highly exceptional in Canadian criminal law: the importance of society's interest in deterring and punishing this blatant exploitation of young persons argues strongly against any procedural limitation of this kind. In reference to section 195(3), the Committee adheres to its general principle that the credibility of a young victim of sexual abuse should be a matter of weight to be decided by the trier of fact, not a matter of presumed unreliability.

With respect to the sentences that should be available against individuals who procure young persons to engage in sexual acts with another person, or who live on the avails of the prostitution of young persons, the Committee considers that deterrence and denunciation must be the paramount sentencing considerations. The cold-blooded nature of the pimp's conduct, and its often life destroying implications for the young prostitutes who do his bidding, should have a mandatory sentence of imprisonment. The Committee can conceive of

no factors which could possibly mitigate the severity of this form of exploitation of the young.

The conduct of the pimp towards young prostitutes is premeditated, persistent and often brutal; the consequences of this relationship for young prostitutes are invariably oppressive and dehumanizing. Parliament has seen fit to prescribe a sentence of life imprisonment, with a minimum sentence of seven years' imprisonment, for persons convicted of grave sexual offences. In the judgment of the Committee, it can scarcely be argued that the procurers of young prostitutes pose any less of a threat to the well-being of Canadian society, or that the importance of deterring and denouncing the sexual procurement of young persons is any less compelling. The Committee therefore recommends that a sentence of 14 years' imprisonment, with a minimum mandatory sentence of two years' imprisonment, be prescribed for persons convicted of procuring, or of living on the avails of the prostitution of, a person who is under 18 years of age.

The Committee recommends:

1. **That the phrase "illicit sexual intercourse" in section 195(1)(a), section 195(1)(b), and section 195(1)(i) of the *Criminal Code* be amended to read, "illicit sexual intercourse or any other sexual act".**

2. **That the phrase "habitually in the company of prostitutes" in section 195(2) of the *Criminal Code* be amended to read, "habitually in the company of a prostitute or prostitutes".**

3. **That section 195(3) of the *Criminal Code* be repealed.**

4. **That section 195(4) of the *Criminal Code* be repealed.**

5. **That section 195(1) of the *Criminal Code* be amended to provide for a sentence of 14 years' imprisonment, with a minimum mandatory sentence of two years' imprisonment, for an accused who is convicted of procuring, or of living on the avails of the prostitution of, a person who is under 18 years of age.**

In its meetings with senior police officers and on the basis of its research findings, the Committee learned of the difficulties entailed in laying charges against the customers of young prostitutes and the investigation and charging of pimps with whom these young prostitutes may associate. In light of their other enforcement responsibilities, most Canadian police forces have insufficient manpower to assign officers to the lengthy task of assembling the evidence requisite for the laying of charges against pimps. While such investigations are demonstrably feasible, each may entail several months of police investigation.

For these undertakings to be successful, it is essential to have police officers who are both especially trained and experienced in regard to these investigations and who are given sufficient time to be able to undertake these assignments. In addition to the reform of the prostitution-related offences, the

Committee believes that enforcement services must be considerably strengthened in order to permit them to succeed in laying charges against pimps who exploit juvenile prostitutes.

The Committee recommends that the Office of the Commissioner in conjunction with the Department of Justice and the Department of the Solicitor General establish with the provinces a special federal-provincial cost-sharing program to provide specific support to municipalities enabling them to establish special police force units, having primary responsibilities for:

1. **Investigation and laying of charges against the clients of young prostitutes.**
2. **Investigation and charging of pimps working with young prostitutes.**

Summary

1. The vast majority of tricks regularly using the services of juvenile prostitutes are males; only 3.1 per cent had a predominantly female clientele. Half of the 229 juvenile prostitutes (50.2 per cent) had been approached for their services on at least one occasion by a woman.
2. Two-fifths of the males and less than a third of the females reported that their most recent trick had approached them on foot, while half of the boys and two-thirds of the girls said that their most recent customer had been in a vehicle.
3. The majority of the most recent tricks were estimated to be between the ages of 35 and 49.
4. About two-thirds of the most recent tricks of girls and about a third of the most recent tricks of boys were reported to have been married.
5. Proportionately more of the girls' most recent tricks were blue collar or service workers while a higher proportion of the males' most recent tricks were professionals, white collar workers or in management positions.
6. Most of the recent tricks of juvenile prostitutes were reported to have been friendly and talkative. In about one in 26 of these encounters, the juvenile prostitute had been either verbally or physically abused.
7. Over two in five of the most recent tricks of male juvenile prostitutes and a third of those of female juvenile prostitutes were reported to have been using alcohol, drugs or both types of substances prior to or during the transaction.
8. The juvenile prostitutes' descriptions of their customers suggest that those of girls typically had sexually unfulfilling home lives while those of boys were gay men who were "in the closet". Most of the youths regarded their customers either with hostility or as pathetic, contemptible and disgusting persons.

9. Over a third of the female juvenile prostitutes admitted that they were working or had previously worked with a pimp. Two-thirds of this group had worked for one pimp while the remainder had worked for two or more pimps.

10. The average age of the pimps was 24.7 years, about three in four were single, most were poorly educated and few had held full-time or part-time conventional jobs.

11. About two in five girls had initially been approached by the pimp while about half were first introduced to their pimps by other persons.

12. Following these initial contacts, a quarter of the girls had been abused, threatened or beaten by the pimps. Over half of the girls had immediately been sent to work on the street.

13. Only about one in five pimps was reported to have ever directly solicited clients for the prostitutes whom they controlled.

14. On average, based on reports given by 32 prostitutes, the daily quotas established by pimps for their girls' earnings were $225 for weekdays and $256 for weekends.

15. On the basis of the average quotas established, and if a girl worked five days each week for 45 weeks during the year, her earnings would be about $53,578. Of this amount, she was repaid by the pimp, on average, about a seventh of what she had earned.

16. Four in five female juvenile prostitutes who had worked for pimps said that they had been beaten, in some instances severely, by these men.

Part IX

Pornography

Chapter 47

Sources of Information

The Committee's Terms of Reference ask it to determine the incidence and prevalence of sexual exploitation of children by way of pornography and to examine the question of access by children and youths to pornographic material. This chapter provides an overview of the issues dealt with in this section of the Report and of the sources of information assembled by the Committee pertaining to its Terms of Reference.

Definition of Pornography

At the outset of its inquiry, the Committee was faced with the problem of the definition of pornography. Pornography is not a legal term, and usage has rendered its meaning unclear. The word is derived from the Greek *pornographos*, the "writing of harlots". Various lexicons have attributed somewhat different secondary meanings to the word and these have changed through time.

At the turn of the century, one major reference source referred to pornography as the "licentious painting employed to decorate the walls of rooms sacred to bacchanalian orgies, examples of which exist in Pompeii".[1] Several decades later, another lexicon defined the word to mean "the discussion of prostitution; obscene writing".[2] Two of the more recently compiled and widely used lexicons attribute somewhat different secondary meanings to the word. One of these sources defines pornography as "the depiction (as in writing or painting) of licentiousness or lewdness: a portrayal of erotic behaviour designed to cause sexual excitement".[3] In the second widely used lexicon, the word is defined as a "description of the life, manners, etc. of prostitutes and their patrons; hence, the expression or suggestion of obscene or unchaste subjects in literature or art".[4]

While, as noted, pornography is not a legal term, the words 'obscenity' and 'obscene' are legal terms. Whether a publication is obscene under Canadian law depends on whether a court considers that a dominant characteristic of the

publication is the undue exploitation of sex, or of sex and crime, horror, cruelty, or violence. Under Canadian law, a pornographic publication is not necessarily legally obscene, whereas an obscene publication is invariably pornographic. The several legal principles established in determining whether a publication meets the legal definition of obscenity are reviewed in Chapter 48.

Where the words 'pornography' or 'pornographic' are used in this Report, they refer to "the depiction of licentiousness or lewdness; a portrayal of erotic behaviour designed to cause sexual excitement". Two working definitions of pornography were used in assembling research findings, the first relating to actions taken by enforcement agencies and the second involving the specification of the types of sexual acts depicted. The latter definition was grounded on a specific listing of the types of sexually explicit depictions in which children have been directly involved as subjects and to the contents of matter to which children may be exposed.

Much of this section of the Report is devoted to providing concrete illustrations of 'pornography', 'child pornography,' and 'obscene' or 'immoral or indecent' publications based on: the actions taken by officials charged with administering the relevant Canadian law; an analysis of the contents of recent issues of the most popular pornographic magazines; and the findings of the National Population Survey in which a representative sample of Canadians was asked about its purchasing habits and views in relation to pornography.

Sources of Information

In undertaking its review, the Committee had no doubt about the deeply rooted concerns of Canadians about the exploitation of children in the making of pornography and the accessibility of pornography to children. In recent years, considerable public pressure has mounted seeking remedial action by legislators at all levels of government — municipal, provincial and federal. Concerned groups have sought to have new legislation introduced or existing statutes amended in order to eliminate child pornography and restrict the display of pornography. These concerns have been fuelled by the enormous growth in the circulation of pornography in retail outlets across Canada, the open display of magazines having sexually explicit depictions on their covers, and the recognition that the advent of audio-visual equipment will likely accelerate the growth of the pornography trade in the country.

In seeking documentation concerning the two main questions relating to the issue of pornography set out in its Terms of Reference, the Committee initially reviewed the major national reports dealing with these issues for the United Kingdom and the United States and the proceedings of the House of Commons Justice and Legal Affairs Committee pertaining to the Canadian law of obscenity. The Committee undertook an extensive bibliographical search of the general and research literature for Canada seeking to identify pertinent

sources of information. It also contacted senior officials of the main enforcement services having responsibility for the enforcement of the Canadian law.

On the basis of its review, the Committee found that there was virtually no complete or reliable documentation for Canada about the dimensions of the pornography trade, the circulation and accessibility of this material, its production and the making of child pornography. What the Committee did find was a small assortment of scholarly treatises dealing with particular social, legal or moral aspects of pornography. Most of these were general reviews drawing upon secondary sources, typically detailing experience abroad. In relation to its Terms of Reference, the Committee found no single Canadian document that addressed the main issues which it had been asked to investigate.

Despite the lack of documentation, the Committee identified a number of primary sources having information about different aspects of pornography which had neither been co-ordinated nor assembled. With the full co-operation of these private and public agencies, this information was drawn upon and is presented in the chapters that follow. In addition, the Committee directly conducted several surveys seeking information about: the importation of pornography; its accessibility in retail outlets; and the purchasing habits and views of a nationally representative sample of Canadians.

The Issues Considered

In the remainder of this chapter, a brief review is given of the Canadian law relating to the importation, making, distribution, sale and public display of sexually explicit materials.

In Chapter 48, *Law of Obscenity*, a fuller review is given of the various obscenity-related offences in federal law. This chapter reviews the existing network of federal laws which, taken together, regulate the different manifestations of child pornography in Canadian legal experience. A number of case studies are presented to illustrate the kinds of situations dealt with under the pertinent sections of the *Criminal Code* relating to obscenity.

In Chapter 49, *Provincial and Municipal Regulation*, a description is given of the regulation of the accessibility to children of pornographic material by provincial and municipal statutes. In the former category, the operation and guidelines of provincial film classification and/or censorship boards are considered, and a review is made of their application in relation to three films showing sexual violence and children in sexually explicit depictions. In the latter category, the use of provincial legislation by municipalities to regulate the display of pornography and its accessibility to young persons is reviewed.

In Chapter 50, *Enforcement Practice*, the enforcement of the various statutes enacted for the purpose of controlling sexually explicit and obscene materials (including child pornography) is reviewed. Specifically considered

are the mandate and operations of: Revenue Canada Customs and Excise Division; R.C.M.P. Customs and Excise Section; and provincial and municipal police forces.

On the basis of its initial review, the Committee learned that the major source of child pornography available in Canada was matter imported from abroad. With the co-operation of the main enforcement services involved — Revenue Canada Customs and Excise and R.C.M.P. Customs and Excise — information was compiled on 26,357 seizures between 1979 and 1981; these findings are given in Chapter 51, *Importation and Seizure*. The information obtained permitted an appraisal to be made of the detected volume of child pornography, regional trends and the types of materials involved.

Drawing upon findings provided by enforcement agencies, distributors and the surveys conducted, a description is given of the *Production and Distribution of Child Pornography* in Chapter 52. In addition, drawing upon case studies, different situations in which children may become involved with child pornographers are identified.

Before turning to a consideration of the circulation of pornographic magazines across Canada and their accessibility to children and youths, a detailed description is provided of the contents of the 11 best-selling pornographic magazines in Canada which had a combined Canadian sales total of over 14 million copies in 1981. The synopsis given in Chapter 53, *Contents of Pornography*, analyses the nature of the pictorial and written matter of these magazines which are readily accessible to Canadian children in a large number of retail outlets across the country.

The findings of three major surveys conducted by the Committee are provided in Chapter 54, *Circulation, Accessibility and Purchase*. This chapter focusses on the issue of accessibility to children of pornography. A review is given of the audited circulation statistics of the pornographic magazines whose contents were analyzed; the findings of the National Accessibility Survey of Retail Outlets focus on how pornographic magazines are displayed in stores across Canada. The findings from these two sources are complemented by those from the National Population Survey. Persons contacted in this survey were asked whether they had ever bought pornography, how old they had been when they had first made such a purchase, their knowledge and views about the display of pornography, and their opinions about its accessibility to children and youths.

In Chapter 55, *Associated Harms*, findings from several national surveys are presented concerning incidents involving exposure of pornography to children in which they were also sexually assaulted. The findings of the National Population Survey document the experiences of persons who were exposed as children to pornography against their will and the reported harms sustained. This chapter also draws upon case studies documenting these experiences.

While the Committee, with the valuable co-operation of a number of private and public agencies, assembled a considerable body of information about the circulation and display of pornographic magazines and the accessibility of this material to children and youths, it recognizes that information on certain important matters is still incomplete. In the Committee's judgment, however, the available findings constitute a reasonably firm basis upon which a number of actions can and should be taken by the Government of Canada which would afford children and youths greater protection from exploitation by means of pornography.

Overview of Canadian Law

As with several other areas within the Committee's mandate, the legal regulation of the making, distribution, sale and public display of explicit sexual materials has both federal and provincial aspects. Further, Canada has assumed international obligations in this regard. Canada is a signatory nation to the *International Agreement for the Suppression of Obscene Publications*[5] and to the *International Convention for the Suppression of the Circulation and Traffic of Obscene Publications*,[6] both of which are instruments of the United Nations. Canada is also a signatory nation to the *Universal Postal Convention*,[7] which sets out the responsibilities of member countries in the Universal Postal Union concerning the transmission through the mails of obscene or immoral materials.

Federal Legislation

The *Criminal Code* does not contain a specific offence relating to the making, distribution or sale of child pornography. The *Criminal Code* contains a variety of proscriptions relating to the making, distribution and sale of obscene materials, as well as a provision authorizing the seizure and forfeiture of obscene publications kept for sale or distribution.[8] The *Criminal Code* also makes it an offence to use the mails for the purpose of transmitting or delivering anything that is "obscene, indecent, immoral or scurrilous";[9] to print or publish, in relation to any judicial proceedings, any indecent matter or indecent medical, surgical or physiological details (with specified exceptions) that, if published, are calculated to injure public morals;[10] to present an immoral, indecent, or obscene theatrical performance;[11] and to exhibit publicly a disgusting object or an indecent show.[12]

The *Customs Tariff*[13] prohibits the importation into Canada of books or visual representations of an "immoral or indecent character," and the *Customs Act*[14] authorizes the seizure and forfeiture of any goods unlawfully imported into Canada. The *Customs Act* further provides for the issuance of "writs of assistance" (which are search warrants in continual effect) pursuant to the investigation of crimes suspected to have been committed against that Act.[15]

The *Canada Post Corporation Act*[16] provides that all mail coming into Canada which contains or is suspected to contain material which is prohibited entry (for example, "immoral or indecent" visual representations under the *Customs Tariff*) shall be submitted to a customs officer for examination, and authorizes the officer to open such mail (other than letters). The Act further authorizes the issuance of "prohibitory orders", which have the effect of preventing the delivery of mail to or by persons committing or attempting to commit an offence by using the postal service[17] (for example, the offence under section 164 of the *Criminal Code*).

Parliament also has an important presence in the area of electronic broadcasting. Under the *Broadcasting Act*,[18] the Canadian Radio–television and Telecommunications Commission (C.R.T.C.) is invested with plenary regulatory authority over radio, television, cable television, and pay television, and this includes the authority to establish limits on the kinds of sexually explicit representations that may legitimately be broadcast.[19]

Provincial Legislation

The use of a child in the making of pornography has not been singled out in any Canadian jurisdiction as a specific category of harm which justifies state intervention into the child's family. Even so, where a child is used by his or her parent or guardian as a subject in a pornographic depiction, this would almost certainly render the child "in need of protection" under the child welfare legislation of each province and territory.

With respect to the access by children and youths to pornographic material, the provinces are empowered to regulate, by way of censorship, classification or other means, the public exhibition of films,[20] provided that the standards used by the provincial boards in so doing are prescribed by law.[21] Eight Canadian provinces have enacted legislation authorizing an administrative board to review films sought to be exhibited publicly within the province. Newfoundland and Prince Edward Island adopt and implement decisions made by the New Brunswick board. The Yukon and the Northwest Territories have adopted more informal systems of film classification.

The provinces also have constitutional jurisdiction to regulate the manner of display of pornographic materials disseminated within their borders. This regulation is typically accomplished by empowering municipalities within the province to enact "by-laws" outlining the conditions under which such materials must be displayed in retail outlets, with particular regard for the non-accessibility of these publications to children. By-laws of this sort have been enacted in a number of municipalities across Canada, including: Burlington, Ontario; Newmarket, Ontario; and Metropolitan Toronto, Ontario. A by-law enacted by the City of Hamilton, Ontario, which was designed to restrict access by young persons to sexually explicit magazines, was struck down on the basis that it was impermissibly vague in describing the sorts of magazines sought to be regulated.[22] The City of Victoria, British Columbia, has enacted a

by-law of even wider scope. Under the Victoria by-law, no business licence-holder or employee thereof may, in the course of such business, sell, lease, or offer for sale or lease, any film or video cassette that depicts real or simulated sexual activity combined with violence or coercion, or real or simulated sexual activity involving a person actually or apparently under the age of sixteen.[23]

Summary

The law relating to the making and distribution of child pornography, and to the accessibility to children of pornographic material, involves difficult legal concepts and practical enforcement problems. When the Committee started its review, it found that there was a lack of reliable documentation about the operation of the existing law and in relation to the issues specified in its Terms of Reference. This section of the Report provides an analysis of the several legal principles which apply in this context, a description of how enforcement agencies in Canada operate to discharge their responsibilities under the law, and research findings on the importation and production of child pornography and on the accessibility to children of pornography.

References

Chapter 47: Sources of Information

[1] ***Webster's Unabridged Dictionary***. An American Dictionary of the English Language. Albany. G. and C. Merriam, 1903.

[2] ***Chamber's Twentieth Century Dictionary***. London. W. and R. Chambers, Ltd., 1939.

[3] ***Webster's Third New International Dictionary***, G. & C. Merriam, 1961.

[4] ***The Shorter Oxford English Dictionary on Historical Principles***, Oxford. Clarendon Press, 1955.

[5] This Agreement first came into force in Canada on March 11, 1912. A Protocol to amend the agreement was signed by Canada on May 4, 1949, on which date the Agreement became an instrument of the United Nations.

[6] This Convention was originally signed by Canada on November 24, 1947. On May 4, 1949, it became an instrument of the United Nations.

[7] The provisions of the *Universal Postal Convention* came into force in Canada on September 8, 1975. Article 33 of the Convention forbids the insertion of obscene or immoral items in the letter post, and the insertion in the letter post of articles of which the importation and circulation is prohibited in the country of destination.

The Convention stipulates that articles found in the mail in contravention of these provisions shall be dealt with according to the law of the country in which they are found.

[8] *Cr. Code*, s. 160.

[9] *Cr. Code*, s. 164.

[10] *Cr. Code*, s. 162 (1)(a). See also s. 162 (1)(b).

[11] *Cr. Code*, s. 163.

[12] *Cr. Code*, s. 159 (2)(b).

[13] *Customs Tariff*, R.S.C. 1970, c. C-41, Schedule C, Tariff Item 99201.

[14] *Customs Act*, R.S.C. 1970, c. C-40, s. 205 (1).

[15] *Customs Act*, R.S.C. 1970, c. C-40, s. 145.

[16] *Canada Post Corporation Act*, S.C. 1980-81, c. 54, s. 40.

[17] *Canada Post Corporation Act*, S.C. 1980-81, c. 54, s. 41.

[18] *Broadcasting Act*, R.S.C. 1970, c. B-11.

[19] See, for example, ss. 6 (1)(a), 6 (1)(c), and 6 (1)(f) of the *Radio (F.M.) Broadcasting Regulations*, chapter 380 of the Consolidated Regulations of Canada 1978; and ss. 6 (1)(a), 6 (1)(c), and 6 (1)(g) of the *Television Broadcasting Regulations*, Chapter 381 of the Consolidated Regulations of Canada, 1978.

There appear to be no similar regulations with respect either to cable television or to pay television, at least as of April 1, 1983. On the issue of whether the Canadian Broadcasting Corporation enjoys Crown immunity from prosecution under the *Criminal Code* (particularly, under the *Code's* obscenity provisions) see *R. v. Canadian Broadcasting Corp.* (1981), 55 C.C.C. (2d) 444 (Ont. C.A.), leave to appeal to Supreme Court of Canada granted (Martland, Ritchie and McIntyre, J.J.) December 1, 1980.

[20] See *Nova Scotia Board of Censors and A-G Nova Scotia v. McNeil*, [1978] 2 S.C.R. 662.

[21] *Re Ontario Film and Video Appreciation Society v. Ontario Board of Censors*, not yet reported, March 25, 1983 (Ont. S.C.).

[22] *Re Hamilton Independent Variety and Confectionary Stores Inc. v. City of Hamilton*, not yet reported, January 17, 1983 (Ont. C.A.).

[23] City of Victoria By-Law 82-107.

Chapter 48

Law of Obscenity

Child pornography does not have a specific status in Canadian criminal law. Rather, the making, importation, distribution or sale of child pornography are dealt with under the more general provisions of the *Criminal Code* relating to obscenity and sexual offences, as well as under federal legislation relating to prohibited importations and the use of the mails. This chapter reviews the network of federal laws which regulates the different manifestations of child pornography.

In undertaking its review, the Committee assembled case studies from a number of sources; these are presented to illustrate the kinds of situations dealt with under the pertinent sections of the *Criminal Code* relating to obscenity. One of these sources was Project "P", jointly established by the Metropolitan Toronto Police Force and the Ontario Provincial Police.

Section 159 of the *Criminal Code*

When considered in light of its extensive judicial interpretation, section 159 of the *Criminal Code* constitutes the major part of Canadian obscenity law. The section provides:

> *Offences Tending to Corrupt Morals*
>
> Corrupting morals — Idem — Defence of public good — Question of law and question of fact — Motives irrelevant — Ignorance of nature no defence — "Crime comic" — "Obscene".
>
> 159. (1) Every one commits an offence who
>
> (a) makes, prints, publishes, distributes, circulates, or has in his possession for the purpose of publication, distribution or circulation any obscene written matter, picture, model, phonograph record or other thing whatsoever, or
>
> (b) makes, prints, publishes, distributes, sells or has in his possession for the purpose of publication, distribution or circulation, a crime comic.
>
> (2) Every one commits an offence who knowingly, without lawful justification or excuse,

(a) sells, exposes to public view or has in his possession for such a purpose any obscene written matter, picture, model, phonograph record or other thing whatsoever,

(b) publicly exhibits a disgusting object or an indecent show.

(c) offers to sell, advertises, publishes an advertisement of, or has for sale or disposal any means, instructions, medicine, drug or article intended or represented as a method of causing abortion or miscarriage, or

(d) advertises or publishes an advertisement of any means, instructions, medicine, drug or article intended or represented as a method of restoring sexual virility or curing venereal diseases or diseases of the generative organs.

(3) No person shall be convicted of an offence under this section if he establishes that the public good was served by the acts that are alleged to constitute the offence and that the acts alleged did not extend beyond what served the public good.

(4) For the purposes of this section it is a question of law whether an act served the public good and whether there is evidence that the act alleged went beyond what served the public good, but is a question of fact whether the acts did or did not extend beyond what served the public good.

(5) For the purposes of this section the motives of an accused are irrelevant.

(6) Where an accused is charged with an offence under subsection (1) the fact that the accused was ignorant of the nature or presence of the matter, picture, model, phonograph record, crime comic or other thing by means of or in relation to which the offence was committed is not a defence to the charge.

(7) In this section, "crime comic" means a magazine, periodical or book that exclusively or substantially comprises matter depicting pictorially

(a) the commission of crimes, real or fictitious, or

(b) events connected with the commission of crimes, real or fictitious, whether occurring before or after the commission of the crime.

(8) For the purposes of this Act, any publication a dominant characteristic of which is the undue exploitation of sex, or of sex and any one or more of the following subjects, namely, crime, horror, cruelty and violence, shall be deemed to be obscene.

Canadian courts have enunciated a number of legal principles applicable to the several offences outlined in sections 159(1) and 159(2), and to the definition of an "obscene publication" in section 159 (8). These general principles, developed and refined in court judgments over the years, serve to clarify and elaborate the provisions of section 159.

- In an obscenity prosecution under section 159, it is not the function of the court to determine whether publications alleged to be obscene hurt anyone, or cause any demonstrable harm. By enacting section 159 and related provisions, Parliament has already made that determination.[1]
- The definition in section 159(8) constitutes the sole test of obscenity with respect to "publications".[2]

- Before 1959, when section 159(8) was enacted, Canadian Courts, in the absence of a Canadian definition of obscenity, applied the test set out in the nineteenth-century English case, *R. v. Hicklin*, namely, "whether the tendency of the matter charged as obscenity is to deprave and corrupt those whose minds are open to such immoral influences, and into whose hands a publication of this sort may fall."[3]
- Further, a minority of the Supreme Court of Canada has held that section 159(8) should be regarded as prescribing an exhaustive test of obscenity where exploitation of sex is concerned, regardless of whether a "publication" is involved, and this has been taken up by other superior courts in Canada.[4]
- The obscenity provisions in the *Criminal Code* do not offend against the guarantees of freedom of speech and of the press in the *Canadian Bill of Rights*.[5] As one Canadian judge stated:[6]

> "Freedom of speech in Canada is not unfettered. The *Canadian Bill of Rights* was intended to protect, and does protect, basic freedoms of vital importance to all Canadians. It does not serve as a shield behind which obscene matter may be disseminated without concern for criminal consequences. The interdiction of the publications which are the subject of the publications which are the subject of the present charges in no way trenches upon the freedom of expression which the *Canadian Bill of Rights* assures."

- In cases close to the border line of the legal definition of obscenity, tolerance is to be preferred to proscription:[7]

> "To strike at a publication which is not clearly obscene may have repercussions and implications beyond what is immediately visible. To suppress the bad is one thing; to suppress the not so bad, or even the possibly good, is quite another. Unless it is confined to clear cases, suppression may tend to inhibit those creative impulses and endeavours which ought to be encouraged in a free society."

Section 159(8) of the *Criminal Code* provides that, "for the purposes of this Act, any publication a dominant characteristic of which is the undue exploitation of sex, or of sex and any one or more of the following subjects, namely, crime, horror, cruelty and violence, shall be deemed to be obscene."

Although sections 159(1) and 159(2) refer to "any obscene written matter, picture, model, phonograph record or other thing whatsoever," section 159(8) refers only to *publications*. Consequently, legal issues have arisen concerning what constitutes a "publication", and whether the section 159(8) definition should be applied notwithstanding that the allegedly obscene matter is not a "publication".[8]

Section 159(8) states only that *a* dominant characteristic, not *the* dominant characteristic, of the publication must involve an undue exploitation of sex. In determining whether the publication has such a "dominant characteristic", consideration must be given to the work as a whole, not to isolated portions of it, and also to the expressed or implicit purpose of its author.[9]

The "undue exploitation" must relate at least partly to a sexual theme. Publications which patently exploit some combination of crime, horror, cruelty, or violence are proscribed only if they also exploit a sexual theme.

Community Standard of Tolerance

Canadian courts have developed several general principles with respect to determining whether a dominant characteristic of a publication is the undue exploitation of sex, or of sex and crime, horror, cruelty or violence, and whether the contents of a publication exceed the Canadian community standard of tolerance. The phrase "undue exploitation of sex . . . " does not refer to the profit-making purpose, or otherwise, of the publication. Rather, it refers to the publication's undue exploitation of a sexual theme.[10] In determining whether a publication is characterized by an undue exploitation of sex, the legal test to be applied is whether the standard of tolerance in the contemporary Canadian community has been exceeded.[11] The standard of tolerance is not synonymous with the moral standards of the community.[12] An assessment of what the community is prepared to tolerate *others* to read is the key determination.

It is a national standard of community tolerance, not a local one, which must be determined in relation to the content of the allegedly obscene publication:[13]

> "(Community) standards are not set by those of lowest taste or interest. Nor are they set exclusively by those of rigid, austere, conservative, or puritan taste and habit of mind. Something approaching a general average of community thinking and feeling has to be discovered. Obviously, this is no easy task, for we are seeking a quantity that is elusive. Yet the effort must be made if we are to have a fair objective standard in relation to which a publication can be tested as to whether it is obscene or not. The alternative would mean a subjective approach, with the result dependent upon and varying with the personal tastes and predilections of the particular judge who happens to be trying the case.[14]

What the community is prepared to tolerate is influenced by the manner and circumstances of the distribution of the impugned publication:[15]

> There are some publications which are so blatantly indecent that they would not be tolerable by the Canadian community under any circumstances. Some pictures are offensive to the majority of people to the point that the Canadian community would not tolerate them on a billboard, or on the cover of a magazine, or on a television screen where persons of all ages and sensibilities would be exposed to them, but would be prepared to tolerate them being viewed by persons who wished to view them. Some pictures would not be acceptable by Canadian community standards in a children's bedtime story-book or primer but would be in a magazine for general distribution. The Canadian community might be prepared to tolerate the exhibition of a motion picture to an adult audience, but would consider the exhibition of the same motion picture to a general audience, which included children, to be an undue exploitation of sex. Similarly, the general distribution of certain magazines to a neighbourhood store accessible to all ages would not be tolerable, whereas the distribution of such magazines to "adult" bookstores to which

children under a certain age were not admitted might not be objectionable. The packaging and pricing of a publication may also be relevant in considering whether Canadian community standards have been exceeded. The distribution of magazines in plastic covers marked "adult" in some respects might act as an attraction rather than a deterrent unless the price was high enough to place it beyond the reach of most children.

Community tolerance must be assessed in relation to the nature and circumstances of the offence with which the accused is charged. For example, where an accused widely distributes sexually explicit publications and is charged with "distributing" under section 159(1)(a), the proper test of "undueness" is whether the contemporary Canadian community would tolerate the distribution of the magazines in question to stores which made them available to the general public. In such a case, it is the community's standard of tolerance for publications given general distribution that has to be determined:[16]

> This standard is not one based solely on the fact that publications will be available to children, nor on the fact that they will be available to persons of advanced years who have led a sheltered life, or, on the other hand, to persons who are broad-minded and permissive. It is the standard of tolerance based on the fact that the publication will be available to the general public which includes all of those groups. It is not proper to speak of the Canadian community standard in isolation. It must be considered in relation to the manner and circumstances of distribution.

Where the charge is distributing obscene publications and involves distribution by a wholesaler to a retailer, the manner and circumstances of display of the publications are not a relevant factor, since display is for the retailer to determine.[17] Where, however, a retailer is charged under section 159(2)(a), the manner and circumstances of display of the impugned publications would be relevant considerations.

Some material, such as explicit pornography involving young persons, should be deemed obscene regardless of the circumstances of its distribution. As one court noted:[18]

> "In my view, what is contained in these pictures goes beyond what the Canadian community is prepared to tolerate, even in the relatively liberal atmosphere of contemporary times. One need only refer, as a particular example, to the pictures depicting teenage boys engaged in fellatio and in sado-masochistic roles replete with the hardware of sexual deviance such as handcuffs, whips, chains, etc. It is obvious from even a cursory viewing that the pictures and slides seized by the police and entered as exhibits to this trial have, as their dominant characteristic, either sex or a combination of sex and cruelty or sex and violence, and that a dominant characteristic of the nearly six thousand such pictures of this nature is the undue exploitation of these factors."

In determining whether a publication exceeds the Canadian community standard of tolerance, reference may be made to whether the depiction involves behaviours which are sexual offences (for example, gross indecency) under the *Criminal Code*. Analogies to the criminal law of sexual offences are relevant but not conclusive to a determination of obscenity.[19]

Undue Exploitation of Sex

Community tolerance of the printed word should be deemed to be greater than community tolerance of pictorial representations.[20] Where a publication is intended to be a unified artistic whole (for example, a novel or a film, as opposed to, say, a magazine), it must be looked at in its entirety in determining whether it is obscene. The work should not be condemned as obscenity merely by reference to its sexual episodes or to its occasional gross and earthy language. Both the episodes portrayed and the language used must be assessed in the context of, and in their relationship to, the entire work.[21]

In *R. v. Brodie*, an obscenity case which concerned D.H. Lawrence's novel, *Lady Chatterley's Lover*. Mr. Justice Judson (whose opinion was concurred in by a majority of the Supreme Court of Canada) stated:[22]

> "Such an enquiry necessarily involves a reading of the whole book with the passages and words to which objection is taken read in the context of the whole book. Of that now there can be no doubt. No reader can find a dominant characteristic on a consideration of isolated passages and isolated words. Under this definition the book now must be taken as a whole. It is not the particular passages and words in a certain context that are before the Court for judgment, but the book as a complete work. The question is whether the book as a whole is obscene, not whether certain passages and certain words, part of a larger work, are obscene."

With respect to films, many factors must be considered in determining whether the film is obscene within the meaning of section 159(8):[23]

> "The author's artistic purpose; the manner in which he has portrayed and developed the story; his depiction and interplay of character; his creation of visual effects by way of skilful cinematography, and so forth. It is in relation to all of these that the sexual episodes must be scrutinized. The important question is: Do the sexual episodes pay a legitimate role in the film, measured by the internal necessities of the film itself?"

Other factors taken into account in determining whether a film exceeds community standards of tolerance are: expert evidence of the film's artistic merit; whether the film has a restricted classification and therefore will not be exposed to young persons; and the treatment of the film by provincial film classification boards.[24]

In considering the question of the "undue exploitation of sex" in an obscenity prosecution, a magazine must be judged differently from a novel. In the latter case, passages which deal in explicit terms with sex must be judged against the entire work and in the context of the novel's theme. On the other hand, a magazine typically has no "theme", in the literary sense. Accordingly, each page must be looked at more or less in isolation from the others, for it is rare that a reader will start at the beginning of the magazine and read through to the end.[25] As one Canadian judge put it, "offensive passages or pictorial presentations in a magazine cannot be saved merely by surrounding them with profound articles on foreign policy".[26]

Admissibility of Expert Evidence

An expert is one who by study or experience has become specially skilled and competent to express an opinion on a scientific or artistic subject.[27] Expert testimony concerning the standard of contemporary Canadian tolerance, or concerning the artistic or literary merits of an impugned publication, is not only admissible but desirable.[28] However, the Crown is not required to adduce evidence concerning the prevailing community standard of tolerance.[29]

In an obscenity trial, it is proper to admit into evidence the opinions of suitably qualified experts concerning the standards of tolerance in contemporary Canada. Public opinion surveys may also be admitted, provided that such evidence is admitted through those who are expert in the field of opinion research, and that approved statistical methods, social science research techniques, and interview procedures have been employed. Essential to the admissibility of this kind of evidence, however, is that the witness testifying be possessed of expert knowledge and that the segment of society whose characteristics are relevant to the question being studied has been properly selected. In obscenity cases, the community whose standards are being considered comprises all of Canada and the sample should therefore be nationally representative and should not be drawn from a single city. The sample being polled must be such that the opinions solicited constitute a prototype of opinions held across Canada.[30]

Although expert evidence concerning community standards or concerning a publication's artistic or literary merit is admissible in an obscenity trial, it is not necessarily conclusive. Expert evidence will be weighted according to its perceived cogency. Further, a court is not bound to adopt even the views of an expert standing uncontradicted; expert evidence may be rejected in its entirety.[31]

Making, Distribution and Sale of Obscene Matter

Several distinctions should be noted concerning the different offences outlined in sections 159(1)(a) and 159(2)(a) of the *Criminal Code*. Section 159(1)(a) makes it an offence to make, print, publish, distribute, circulate or to have in possession for the purpose of publication, distribution or circulation, any obscene written matter, picture, model, phonograph record, or other thing whatsoever. These offences are directed primarily, though not exclusively, at the maker, publisher or wholesaler of obscene materials. For purposes charged under this section, ignorance of the nature or presence of the impugned material is not a defence.[32] The law deems them to know the nature of the commodities which they either bring into existence or distribute commercially.

On the other hand, section 159(2)(a) makes it an offence for any person who *knowingly, without lawful justification or excuse*, sells, exposes to public view, or has in his possession for such a purpose any obscene written matter,

picture, model, phonograph record, or other thing whatsoever.[33] These offences are directed primarily at retailers, who constitute the last link in the chain of commercial distribution. A retailer who sells a large selection of magazines, for example, may not be aware of the content of each magazine he or she sells. Accordingly, the section 159(1)(a) offence may only successfully be charged where knowledge on the seller's part is proved.

The following legal principles have been enunciated with respect to the different offences in section 159;

- Where an accused is charged with making an obscene photograph under section 159(1)(a), the Crown is not required to prove that the accused published, distributed or circulated the photograph, or that he intended to publish, distribute or circulate the photograph. The word 'makes' in section 159(1)(a) is very broad, and encompasses a single act of creation.[34]

- Further, where an accused is charged with making an obscene photograph under section 159(1)(a), that the photograph was intended solely for private use and was not circulated is a relevant consideration in determining whether the Canadian community would tolerate its making. In *Re Hawkshaw and The Queen*,[35] Chief Justice Howland of the Ontario Court of Appeal stated:[36]

> "The fact that the picture was intended solely for private viewing and was not intended to, and did not come into anyone's hands, other than those of the person who took the picture and the commercial establishment which developed it, may be very relevant in considering what the Canadian community would tolerate. A sketch or a model which is the product of the author's imagination and is only intended to be viewed privately might not be found by the trial judge to constitute an undue exploitation of sex. On the other hand, he might be driven to conclude that the community would not tolerate, even for private viewing, a photograph depicting the commission of an act of gross indecency where one of the participants is a minor. In short, publication is not a prerequisite to a determination that a picture is obscene, but it is a relevant circumstance to be weighed in making this determination."

- The private and non-commercial showing of an obscene film to friends does not constitute "publication or circulation" within the meaning of section 159(1)(a) and is not a criminal offence.[37]

- If a person has in his possession obscene matter for the purpose of distribution, it does not matter whether the means of distribution be sale, consignment for sale, free distribution or otherwise. "Distribution" in section 159(1) includes all means of distribution.[38]

- The word "distributes" in section 159(1) is not limited to the commercial connotation of distribution by a wholesaler to a retailer. Rather, the word "distributes" is broad in its meaning and clearly applies to the act of a wholesaler in allocating and delivering magazines to retail stores.

- However, the act of distribution in such circumstances is complete upon delivery to the retail stores. Accordingly, on the question of whether the publications are obscene, the manner and circumstances of distribution

are relevant considerations, but the manner of display and sale by the retailers is not. The wholesaler typically has no control over the mode or manner of display of the magazines in such stores.[39]

- "Distribution" and "sale" are not synonymous terms. By differentiating between the activities respectively outlined in sections 159(1)(a) and 159(2)(a), Parliament drew a line through the chain from production to consumption at a point immediately preceding those who sell to the ultimate consumer. Accordingly, evidence of possession for *sale*, when unsupported by other evidence, is not evidence of possession for *distribution*. Parliament has made it clear that knowledge must be proved against the person who sells to the ultimate consumer. A sales clerk who sells arguably obscene materials cannot be said to be a "distributor" of them.[40]

- The renting out of obscene movies in the form of video cassettes constitutes distribution or circulation of them within the meaning of section 159(1) (a), notwithstanding that the cassettes would be used only in the home or at small parties.[41]

- With respect to the offences outlined in section 159(2)(a), the word "knowingly" does not require that the accused possess the legal knowledge of whether something is legally obscene. It is sufficient to prove that he had knowledge of its subject matter.[42] For example, where films are shown in the back of a bookstore, amid signs reading "Restricted to persons over 18"; where another film shown in the establishment had earlier resulted in a charge; and where the film in question had been approved for restricted viewing by the provincial theatres branch only after being edited, these factors indicate sufficient knowledge. In such circumstances, even if there is no actual knowledge, the doctrine of wilful blindness will operate.[43]

- The mere fact that a provincial theatres branch has approved a film does not constitute "lawful justification or excuse" under section 159(2)(a). The provincial board's approval does not imply that the film is not obscene, but is merely evidence which the court may consider on the issue of obscenity.[44]

In each of the following case studies, the accused pleaded guilty. The studies are of interest not because they elucidate important legal doctrines, but rather because they illustrate the kinds of situations in which section 159(1) has been called upon to counteract involving the making, distribution and sale of obscene matter.

Case Study 1

In 1980, Project "P" was notified by a commercial film processing laboratory that, on three occasions, the accused had left film for processing at one of its outlets; these films yielded photographs of a male masturbating, ejaculating and urinating.

In his dealings with the film laboratory, the accused used an assumed name, but was identified by the licence number of his vehicle which one of the laboratory's employees jotted down and reported to Project "P". The accused, a male in his early forties, lived in a large Ontario town and had been on probation since being convicted in 1979 of performing an indecent act (exposing himself in a public place). The accused's probation officer

indicated that the accused had only been to a psychiatric clinic twice since his conviction, and hence was in violation of a condition of his probation stipulating that he seek psychiatric care.

When interviewed, the accused admitted taking the photographs. A search of his car revealed numerous pornographic photographs, penis rings, a penis vibrator, lotions and women's underwear. These items were seized.

It was decided to charge the accused with breach of probation and with making obscene pictures, and to seek the extention of his probation period in order to gain some means of ensuring that he received psychiatric treatment. The accused pleaded guilty to both charges in Provincial Court. For making obscene pictures, he received two years on probation with the condition that he resume his psychiatric treatment; for his breach of the terms of his probation, the accused was fined $300.

Case Study 2

In 1978 and 1979, Revenue Canada Customs and Excise sought to eliminate from the Canadian market a line of pocketbooks produced by a United States publisher. The pocketbooks contained no photographs or illustrations, but included written descriptions of acts of pedophilia, bestiality, bondage, whipping, buggery, incest and homosexuality. In 36 seizures conducted across Canada, about 750,000 copies of these books were seized.

The Canadian representative of the United States publisher (the first accused) retained the second accused, president of a Canadian printing firm (the corporate accused), to produce copies of the books in Canada. These domestic editions would not be subject to seizure by Customs.

The second accused received individual copies of the books to be reprinted. These copies were brought into Canada by means of falsified importation documents: when the books were submitted to Canada Customs by the United States publisher, slightly altered versions of their titles were recorded on the importation papers. Thus, the recorded titles did not appear on Revenue Canada's computerized listing of prohibited materials and the books were admitted into the country.

The corporate accused printed over 100,000 volumes comprising some 20 titles. The Canadian copies were identical to their United States counterparts, except that the corporate accused was listed as the publisher.

In 1979, searches were carried out at the premises of the corporate accused and the first accused, by R.C.M.P. Customs and Excise officers and by Project "P". The first, second and corporate accused were charged with making an obscene publication. A Justice of the Peace ordered that the seized books be retained pursuant to section 446(1) of the *Code*.

In Provincial Court, the corporate accused pleaded guilty and was fined $5,000 with distress (the estimated amount of profit from the unlawful venture). The charges against the other two accused were withdrawn. All seized documents were ordered returned to the accused after the expiry of the appeal period; the court also ordered the forfeiture to the Crown of all of the obscene books.

Case Study 3

In 1980, the police force of an Ontario city requested the assistance of Project "P", in conducting a search of the business premises of a magazine and paperback book distributor. The distributor, subsequently the corporate accused, had come to the attention of the local police when they had seized

plastic-wrapped magazines and paperback books from a variety store. These publications appeared to be obscene. An invoice indicated that the corporate accused had distributed the impugned material to the store. The premises of the corporate accused were searched, and a large number of pornographic magazines were seized, along with documentation of their purchase, sale and distribution in Ontario. The corporation, and the individual who controlled it, were each charged with distributing obscene matter and possession of obscene matter for purposes of distribution. The Crown proceeded by way of summary conviction, and apparently withdrew both charges against the accused individual, and the "possession" charge against the company; the corporate accused pleaded guilty to the "distributing" charge and was fined $500.

The magazines originally seized from the variety store were returned to the retailer because they were deemed by police not to fall within the section 159(8) definition of obscenity. The books were returned because they contained no photographs and hence would also be excessively difficult to prove obscene.

It was learned that the distributor had sent a document to the variety store proprietor; in this document, the distributor purportedly undertook to assume full responsibility "for any legal actions pertaining to censorship, providing that such actions be initiated summarily against a publication or publications handled exclusively by [the distributor]." The document further provides that the distributor's agreement to assume legal responsibility would be nullified if the retailer caused an adult publication to come into the possession of a minor. Finally, the document states that the distributor "has the right to retain legal counsel of their own choice, as well as the right of plea."

Case Study 4

In 1978, Project "P" was notified by the Post Office that an advertisement in the September issue of *Hustler* magazine offered sexually explicit slides and motion pictures, to be ordered by writing to a post office box in an Ontario city. The accused, who had placed the advertisement, had conducted a similar mail order operation in 1977, but at that time had only been selling non-obscene slides copied from the photographs in popular adult magazines.

Two months later, Project "P" learned of a new advertisement placed by the accused, this time in a photography magazine. The accused sought to exchange nude photographs with readers and listed a new post office box number.

Project "P" ordered material from the accused's first post office box and received rolls of exposed black and white film. When processed, the film yielded photographs explicitly depicting sex acts between males and females. The pictures had been rephotographed from "hard core" magazines.

In searching the accused's residence, police found and seized photographs, letters, invoices and photographic equipment. A search of the first post office box revealed cheques and orders for sexually explicit photographs and magazines.

The accused was charged with possession of obscene publications for purposes of distribution and with distributing obscene publications; ultimately, the latter charge was withdrawn. Upon pleading guilty to the remaining charge in Provincial Court, the accused was fined $1000 (or three months' imprisonment), an amount agreed to by the Crown and the defence. The judge, however, stated that he would have been prepared to impose a $3000 fine to express his concern over the mail-order distribution of obscene pictures, a marketing practice that gave children access to such matter.

Approval by Customs or Provincial Theatres Branches

That Customs Department officials allow certain materials into the country does not afford a defence for an accused charged with an obscenity offence in relation to those materials. The legal test for obscenity is not the same as the test for prohibited entry under the *Customs Tariff*. Moreover, in an obscenity prosecution under the *Criminal Code*, it is for the Court, and not for the Customs Department, to determine whether a publication is obscene. The determination of obscenity is essentially a matter of opinion, and if customs officials express an opinion that a matter is not obscene, it remains just an opinion and no more.[45]

Similarly, that a film has been approved by a provincial theatres branch does not afford a defence to an accused who is charged with an obscenity offence in relation to that film, nor does it constitute "lawful justification or excuse" within the meaning of section 159(2)(a).[46] The provincial board's approval does not imply that the film is not obscene (since provincial boards use tests different from that outlined in section 159(8)of the *Criminal Code*), but is merely evidence which the court may consider on the issue of obscenity.[47]

Case Study 5

In 1981, R.C.M.P. Customs and Excise officers entered the accused's Toronto residence under the authority of a writ of assistance. The accused, a 40 year-old male, owned an unincorporated magazine distributorship which he operated out of the basement of his home. The R.C.M.P. officers were investigating a report that magazines and books prohibited under the *Customs Tariff Act* had been smuggled into Canada by the accused's firm and were being kept in his home for purposes of distribution. Upon conducting their search, the officers found that the material in question had cleared Customs; the accused was able to produce a Customs importation authorization (form B-3) issued him with respect to the books and magazines.

When consulted, Project "P" reported that the material should not have been admitted into Canada, and was allowed in only because the Toronto Customs Office had cleared it without checking with the Prohibited Importations Section in Ottawa, or examining the bi-weekly list of prohibited publications.

After being contacted by the R.C.M.P., Project "P" seized 600 magazines and 100 pocketbooks from the accused, and charged him with three counts of keeping obscene material for the purpose of distribution.

Among the pocketbooks seized were titles such as "Confessions of a Good Wife" and "Daughter-Loving Daddies"; the subject matter of these books included the sexual exploits of a 15 year-old girl, and the sexual relationship of a man and sheep. The magazines were of the "glossy" variety, had list prices of as much as $8.95 apiece, and had been plastic-wrapped by the accused. The magazines that were seized had titles such as "250 Baby Dolls" and "Hot Box". All of the books and magazines had affixed price stickers, and thus appeared to be ready for distribution.

At trial before judge and jury in the Provincial Court, the accused, representing himself, pleaded not guilty to the three counts against him. The trial judge instructed the jury that they were free to find some, all or none of the seized material obscene. After deliberating for six hours, the jury found all of

the books and magazines obscene and found the accused guilty on all three counts. The judge fined the accused $700 for each count, or upon failure to pay within eight months, six months' imprisonment for each count.

Case Study 6

In 1976, Project "P" conducted a search of the premises of a periodical distributing company headquartered in a small Ontario city. Various publications and documents were seized. The company supplied magazines (including *Hustler*) and paperback books imported from the United Kingdom and the United States to local distributors. Project "P" laid charges of distributing obscene publications against the company and its manager with respect to 13 magazine titles distributed nationally by them.

The March, 1976 issue of *Hustler* magazine contained photographs of the following:

- A scene of bestiality in which a dog mounts a nude woman from the rear;
- Three mice crawling about a woman's genital area;
- The after-effects of anal sex (i.e., excrement covering the man's penis and the woman's buttocks);
- A "diarrhoea dinner" (i.e., fried human excrement served on a dinner plate in preparation for consumption);
- A woman in the course of having her pubic hair shaved (a series of photographs);
- A woman with a cigarette in her vagina.

In Provincial Court, the accused company pleaded guilty to seven counts of distributing obscene magazines and was fined $35,000. The charge against the company's manager was dismissed, as the Crown chose not to introduce evidence against him.

In 1976, two local distribution companies and their managers were charged with conspiracy to distribute 13 obscene publications. These two companies (apparently) had been supplied with the publications in question by the national distributor discussed above. In 1977, the accused companies appeared in Provincial Court and pleaded guilty to all charges against them. The first of the companies was fined $25,000 or distress, while the second received a fine of $75,000 or distress. Both accused admitted failing to examine the publications at the time that they distributed them; both also admitted that the magazines exceeded community standards of tolerance, but argued that these standards were difficult for them to discern in the absence of specific legislation or official guidelines.

The "Public Good" Defence

With respect to the "public good" defence in sections 159(3) and 159(4), the accused carries the burden of establishing that his or her acts served the "public good". Where, for example, expert evidence indicates that the qualities of an obscene book would be appreciated only by the sophisticated reader, and that restricted distribution of the book to a group capable of deriving some advantage from it was neither claimed nor proved by the accused, the defence of "public good" is not made out.[48]

Child Pornography and the Law of Obscenity

The making, distribution and sale of child pornography in Canada are dealt with primarily under the general "obscenity" provisions in section 159 of the *Criminal Code*. Prosecutions in which child pornography has in some way been a feature fall into two broad groups: cases in which a Canadian child or children have been used in the making of pornography; and cases in which publications containing explicit written or visual representations of young persons in sexual contexts have been charged as obscene.

The examples in the first category given in Chapter 52, ***Production and Distribution of Child Pornography***, constitute the most illustrative Canadian legal cases in which a person was prosecuted for making child pornography. They illustrate both the variety of contexts in which this phenomenon occurs, and the various legal principles which apply, depending on which criminal offence is charged against the accused. The examples in the second category constitute the most illustrative Canadian legal cases in which a person or corporation was prosecuted, not for making pornography involving Canadian children, but for possessing child pornography for the purpose of distribution. These examples also serve to illustrate the different factual contexts and legal principles which apply to the distribution or intended distribution of foreign-made child pornography.

Seizure of Obscene Publications

While section 159 of the *Criminal Code* sets out various obscenity offences for which the accused is liable to conviction and punishment, section 160 specifically mandates a procedure for seizing obscene publications. It provides:

> 160.(1) A judge who is satisfied by information upon oath that there are reasonable grounds for believing that any publication, copies of which are kept for sale or distribution in premises within the jurisdiction of the court, is obscene or a crime comic, shall issue a warrant under his hand authorizing seizure of the copies.
>
> (2) Within seven days of the issue of the warrant, the judge shall issue a summons to the occupier of the premises requiring him to appear before the court and show cause why the matter seized should not be forfeited to Her Majesty.
>
> (3) The owner and the author of the matter seized and alleged to be obscene or a crime comic may appear and be represented in the proceedings in order to oppose the making of an order for the forfeiture of the said matter.
>
> (4) If the court is satisfied that the publication is obscene or a crime comic, it shall make an order declaring the matter forfeited to Her Majesty in right of the province in which the proceedings take place, for disposal as the Attorney General may direct.

(5) If the court is not satisifed that the publication is obscene or a crime comic, it shall order that the matter be restored to the person from whom it was seized forthwith after the time for final appeal has expired.

(6) An appeal lies from an order made under subsection (4) or (5) by any person who appeared in the proceedings

(a) on any ground of appeal that involves a question of law alone.

(b) on any ground of appeal that involves a question of fact alone, or

(c) on any ground of appeal that involves a question of mixed law and fact.

as if it were an appeal against conviction or against a judgment or verdict of acquittal, as the case may be, on a question of law alone under Part XVIII and sections 601 and 624 apply mutatis mutandis.

(7) Where an order has been made under this section by a judge in a province with respect to one or more copies of a publication, no proceedings shall be instituted or continued in that province under section 159 with respect to those or other copies of the same publication without the consent of the Attorney General.

(8) In this section "court" means

(a) In the Province of Quebec, the provincial court, the court of the sessions of the peace, the municipal court of Montreal and the municipal court of Quebec; (a.1) in the Provinces of New Brunswick, Alberta and Saskatchewan, the Court of Queen's Bench;

(b) in the Province of Prince Edward Island, the Supreme Court; or

(c) in any other province, a county or district court;

"crime comic" has the same meaning as it has in section 159: "judge" means a judge of a court.

The section only applies where a publication, copies of which are kept for sale or distribution in premises within the jurisdiction of the court, is found to be obscene within the section 159(8) definition. Accordingly, forfeiture of these copies will only be ordered after the Crown has proven beyond reasonable doubt that the publication is obscene and that copies of it are being kept for sale or distribution in premises within the jurisdiction of the court.[49]

Notwithstanding section 160(2), the onus of proving the above matters on a section 160 forfeiture application is on the Crown.[50] On a section 160 forfeiture application, the warrant of seizure must describe the publications in such a way that the police officers executing it are aware of the particular publications to be seized. Description of the publication by publisher is sufficient, but the warrant of seizure cannot be "open-ended"[51]. Where the Crown does not adduce evidence on a section 160 forfeiture application and does not place any of the seized material before the Court, there is no legal basis for the judge to make an order of forfeiture, and any order so made must be quashed and the seized material returned to its owner.[52]

Since proof that the publications are kept for sale or distribution is required in order for the court to make an order of forfeiture under section

160, it is proper for the court to inquire into how the proposed sale or distribution is to be made. Where there are no restrictions concerning how the publication is to be sold, and where it is intended to be for general sale, then the proper question on the issue of obscenity is: Would the contemporary Canadian community tolerate the sale or distribution of the publication to stores which made them available to any member of the public?[53] Applications under section 160 are in the nature of *in rem* proceedings against the publications themselves. Neither the occupier of the premises nor the author or publisher of the publication is convicted of an offence.[54]

Use of the Mails

Section 164 of the *Criminal Code* provides:

> 164. Every one commits an offence who makes use of the mails for the purpose of transmitting or delivering anything that is obscene, indecent, immoral or scurrilous, but this section does not apply to a person who makes use of the mails, for the purpose of transmitting or delivering anything mentioned in subsection 162(4).

The most recent reported prosecution under this section[55] involved an issue of the newspaper, "The Body Politic". The newspaper is mailed to subscribers, and the December, 1977 issue contained an article entitled, "Men Loving Boys Loving Men". The apparently fictional protagonists in the article are homosexual pedophiles who participate in acts of buggery and oral sex with young boys. The article extols the joys of a homosexual-pedophilic lifestyle and concludes with the comment that adult males so-inclined "deserve our praise, our admiration and our support".

The corporate accused (Pink Triangle Press) and three of its officers were acquitted at trial on the section 164 charges.[56] On appeal to the County Court, the acquittal was set aside and a new trial ordered, on the basis of the trial Judge's several errors of law.[57] The accused appealed against this ruling to the Ontario Court of Appeal.[58]

In dismissing the accused's appeal, the Court clarified the legal principles applicable to the section 164 offence:

> From its plain words, section 164 applies to everyone, and publishers of subscription newspapers are not excepted.
>
> Although the words "immoral" and "indecent" in section 164 are vague, it is through the use of such words in the law that the values of the community find expression in the courtroom. The Court should construe these terms in the context of Canadian community standards of tolerance.
>
> Whether a matter is "immoral or indecent" within the meaning of section 164 is to be determined by whether the Canadian community standard of tolerance has been exceeded in the particular circumstances. Further, where the publication in question is a newspaper, which has no theme, an offensive passage will not be redeemed by the context of the rest of the newspaper. The

offensive passage must be looked at more or less in isolation from the rest of the publication.

In addition to the offence set out in section 164 of the *Criminal Code*, the *Canada Post Corporation Act*[59] contains provisions regulating the use of the mails. By section 39(2) of that Act, the Canada Post Corporation is authorized to open any undeliverable mail, including undeliverable letters. "Undeliverable mail" and "undeliverable letter"[60] include among other things, any mail or letter the delivery of which is prohibited by law, for example, mail or letters contravening section 164 of the *Criminal Code*.

Sections 40(1) and 40(2) of the *Canada Post Corporation Act* provide:

> 40. (1) All mail from a country other than Canada containing or suspected to contain anything subject to customs or tolls or anything the importation of which is prohibited shall be submitted to a customs officer for examination.
>
> (2) A customs officer may open any mail other than letters, submitted to him under this section and may
>
> (a) cause letters to be opened in his presence by the addressee thereof; or
>
> (b) at the option of the addressee, open letters himself with the written permission of the addresee thereof;
>
> and where the addressee of any letter cannot be found or where he refuses to open the letter, the customs officer shall return the letter to the Corporation and it shall be dealt with as undeliverable mail in accordance with the regulations.

These provisions authorize a customs officer to examine any mail (other than letters) suspected to be prohibited entry into Canada and also provides for the examination of letters sought to be mailed into Canada. The law relating to prohibited importations is discussed in Chapter 51.

The *Canada Post Corporation Act* provides for "prohibitory orders" to be issued. A prohibitory order is an official sanction which forbids the delivery of mail to or posted by certain persons. Section 41(1) of the Act provides:

> 41. (1) Where the Minister believes on reasonable grounds that any person
>
> (a) is, by means of mail,
>
> (i) committing or attempting to commit an offence, or
>
> (ii) aiding, abetting, counselling or procuring any other person to commit an offence,
>
> (b) with intent to commit an offence, is using mail to accomplish his object, or
>
> (c) is, by means other than mail, aiding, abetting, counselling or procuring any other person to commit an offence by means of mail,
>
> the Minister may make an order (in this section called an "interim prohibitory order") prohibiting the delivery, without the consent of the Minister, of mail addressed to or posted by that person (in this section called the "person affected").

Sections 41(2) through 41(15) outline the procedure for appealing from an interim prohibitory order; the powers, duties, and composition of the Board of Review; the effect of prohibitory orders; and the conditions under which an order may be revoked or reinstated. Section 41(14) specifies that:

> . . . while an interim or final prohibitory order is in effect, the Minister may
>
> (a) detain or return to the sender any mail addressed to, or anything posted by, the persor affected; and
>
> (b) declare any mail detained pursuant to this section to be undeliverable mail, and any mail so declared shall be dealt with in accordance with the regulations.

The term "offence" used in section 41(1) of the *Canada Post Corporation Act* includes the attempted importation of "immoral or indecent" matter under the *Customs Tariff Act*.[61] A summary of the customs-related offences in the *Customs Tariff* and the *Customs Act*[62] is provided in Chapter 51.

Summary

1. Section 159(1)(9) of the *Criminal Code* makes it an offence to make, print, publish, distribute, circulate, or to have in one's possession for the purpose of publication, distribution, or circulation, any obscene written matter, picture, model, phonograph record, or other thing whatsoever. That the accused was ignorant of the nature or presence of the allegedly obscene matter is not a defence to a charge under this section.

2. Section 159(2)(9) of the *Criminal Code* provides that everyone, who knowingly, without lawful justification or excuse, sells, exposes to public view, or has in his possession for such a purpose any obscene written matter, picture, model, phonograph record, or other thing whatsoever.

3. The *Criminal Code* provides the following definition of an obscene publication, namely, any publication a dominant characteristic of which is the undue exploitation of sex, or of sex and any one or more of the following subjects, namely, crime, horror, cruelty, and violence.

4. In determining whether a publication has such a "dominant characteristic", regard must be had to the work as a whole, and to the expressed or implicit purpose of its author.

5. The phrase "undue exploitation of sex . . . " does not refer to the profit-making purpose, or otherwise, of its author. Rather, it refers to the publication's undue exploitation of a sexual theme.

6. The "undue exploitation" must relate at least partly to a sexual theme. Publications which patently exploit some combination of crime, horror, cruelty, or violence are proscribed only if they also exploit a sexual theme.

7. In determining whether a publication is obscene in that it is characterized by an undue exploitation of sex, the legal test to be applied is whether the standard of tolerance in the contemporary Canadian community has been

exceeded. The standard of tolerance is not synonymous with the moral standards of the community. An assessment of what the community is prepared to tolerate others to read is the key determination.

8. It is a national standard of community tolerance, not a local one, which must be determined in relation to the allegedly obscene publication.

9. Where a publication is intended to be a unified artistic whole (for example, a novel or a film as opposed to, say, a magazine), it must be looked at in its entirety in determining whether it is obscene. The work should not be condemned as obscenity merely by reference to its sexual episodes or to its occasional gross and earthy language. Both the episodes portrayed and the language used must be assessed in the context of, and in their relationship to, the entire work.

10. In the context of an obscenity prosecution, a magazine must be judged differently from a novel. In the latter case, passages which deal in explicit terms with sex must be judged against the entire work, and in the context of the novel's theme. On the other hand, a magazine typically has no "theme" in the literary sense.

11. Expert testimony concerning the standard of contemporary Canadian tolerance, or concerning the artistic or literary merits of an impugned publication, is advisable, provided that such testimony is given by a person who, by study or experience, is specially qualified and competent to express an opinion on the issue in question.

12. The Crown is not required to adduce evidence concerning the prevailing community standard of tolerance in Canada.

13. That Customs officials allow certain materials into the country, or that a film has been approved by a provincial theatres branch, does not afford a defence to a person who is charged with an obscenity offence in relation to those materials or to that film. In an obscenity prosecution under the *Criminal Code*, it is for the Court, and not for the Customs Department or a provincial theatres branch, to determine whether a publication is obscene. The test used in determining obscenity under the *Criminal Code* is not the same as those employed by the Customs Department or by provincial theatres branches.

References

Chapter 48: Law of Obscenity

[1] *R. v. Prairie Schooner News Ltd. and Powers* (1970), 1 C.C.C. (2d) 251 (Man. C.A.).

[2] *Dechow v. The Queen* (1977), 35 C.C.C. (2d) 22 (S.C.C.).

[3] *R. v. Hicklin* (1868), L.R. 3 Q.B. 360.

[4] *Dechow v. The Queen, supra*, note 2; *Re Hawkshaw and The Queen* (1982), 69 C.C.C. (2d) 503 (Ont. C.A.), leave to appeal to Supreme Court of Canada granted (Laskin C.J.C., McIntyre and Wilson, J.J.) November 1, 1982. According to the Registrar of the Supreme Court of Canada, this case will be argued sometime in 1983-84 judicial term.

[5] *R. v. Prairie Schooner News Ltd. and Powers, supra*, note 1.

[6] *R. v. Prairie Schooner News Ltd. and Powers, ibid., at 271, per* Dickson J.A.

Whether the obscenity provisions in the *Criminal Code* contravene the *Canadian Charter of Rights and Freedoms* has yet to be judicially determined.

[7] *R. v. Dominion News and Gifts Ltd.* (1963), 40 C.R. 109 at 127 *per* Freedman J.A. (Man. C.A.), aff'd *Dominion News and Gifts Ltd. v. The Queen* (1964), 42 C.R. 209 (S.C.C.).

[8] See, *for example, Dechow v. The Queen, supra*, note 2; and *R. v. McCormick*, unreported, January 10, 1980 (Ont. Co. Ct.).

[9] *R. v. Times Square Cinema Ltd.* (1971), 4 C.C.C. (2d) 229 (Ont. C.A.); *R. v. The MacMillan Company of Canada* (1976), 31 C.C.C. (2d) 286 (Ont. Co. Ct.).

[10] *R. v. Prairie Schooner News Ltd. and Powers, supra*, note 1.

[11] *R. v. Sudbury News Service Ltd.* (1978), 39 C.C.C. (2d) 1 (Ont. C.A.) *R. v. Penthouse International Ltd.* (1979), 46 C.C.C. (2d) 111 (Ont. C.A.).

[12] *R. v. Penthouse International Ltd. et al., ibid.*

[13] *R. v. Kiverago* (1973), 11 C.C.C. (2d) 463 (Ont. C.A.).

[14] *R. v. Dominion News and Gifts, supra*, note 7 at 126 *per* Freedman J.A.

[15] *R. v. Sudbury News Service Ltd.* (1978), 18 O.R. (2d) 428 at 435 *per* Howland C.J.O. (Ont. C.A.).

[16] *R. v. Sudbury News Service Ltd., ibid.*, at 438-39 *per* Howland C.J.O.

[17] *R. v. Sudbury News Service Ltd., ibid.*

[18] *R. v. McCormick, supra*, note 8 at 23 *per* Ferguson Co. Ct. J.

[19] *R. v. MacMillan Co. of Canada, supra*, note 9; *R. v. Goldberg and Reitman* (1971), 4 C.C.C. (2d) 187 (Ont. C.A.).

[20] *R. v. Prairie Schooner News Ltd. and Powers, supra*, note 1.

[21] *R. v. Odeon Morton Theatres Ltd. and United Artists Corp.* (1974), 16 C.C.C. (2d) 185 (Man. C.A.).

[22] *R. v. Brodie* (1962), 132 C.C.C. 161 at 179 (S.C.C.).

[23] *R. v. Odeon Morton Theatres Ltd. and United Artists Corp., supra*, note 21 at 194 *per* Freedman C.J.M.

[24] *R. v. Odeon Morton Theatres Ltd. and United Artists Corp., ibid.; R. v. Goldberg and Reitman, supra*, note 19.

[25] *R. v. Penthouse International Ltd. et. al., supra*, note 11.

[26] *R. v. Penthouse International Ltd. et al., ibid.*, at 117 *per* Weatherston J.A.

[27] *R. v. Prairie Schooner News Ltd. and Powers, supra*, note 1.

[28] *R. v. Prairie Schooner News Ltd. and Powers*, *ibid.*, *But cf. R. v. Penthouse International Ltd.*, *supra*, note 11, esp. at 117.

[29] *R. v. Cameron*, [1966] 4 C.C.C. 273 (Ont. C.A.); *R. v. Ariadne Developments Ltd.* (1974), 19 C.C.C. (2d) 48 (N.S.C.A.).

[30] *R. v. Prairie Schooner News Ltd. and Powers*, *supra*, note 1.

[31] *R. v. Prairie Schooner News Ltd. and Powers*, *ibid.*

[32] *Cr. Code*, s. 159 (6).

[33] Emphasis added.

[34] *Re Hawkshaw and The Queen*, *supra*, note 4.

[35] *Ibid.*

[36] *Ibid.*, at 516.

[37] *R. v. Rioux*, [1970] 3 C.C.C. 149 (S.C.C.); *R. v. Leong* (1961), 37 C.R. 317 (B.C.S.C.).

[38] *R. v. National News Co.(1952), 16 C.R. 369 (Ont. C.A.).*

[39] *R. v. Sudbury News Service Ltd.*, *supra*, note 15.

[40] *R. v. Dorosz* (1971), 14 C.R.N.S. 357 (Ont. C.A.). See generally *Fraser v. The Queen*, [1967] 2 C.C.C. 42 (S.C.C.).

[41] *R. v. Video Movieshop* (1982), 67 C.C.C. (2d) 87 (Nfld. S.C.).

[42] *R. v. Cameron*, *supra*, note 29 See also *R. v. McFall* (1975), 26 C.C.C. (2d) 181 (B.C.C.A.).

[43] *R. v. McFall*, *ibid.*

[44] *R. v. McFall*, *ibid.*

[45] *R. v. Prairie Schooner News Ltd. and Powers*, *supra*, note 1; *R. v. 294555 Ontario Ltd.* (1978), 39 C.C.C. (2d) 352 (Ont. C.A.).

[46] *R. v. McFall*, *supra*, note 42; *R. v. Daylight Theatre Co.* (1973), 13 C.C.C. (2d) 524 (Sask. C.A.).

[47] *R. v. McFall*, *ibid.*

[48] *R. v. Delorme* (1973), 15 C.C.C. (2d) 350 (Que. C.A.).

[49] *R. v. Penthouse International Ltd.*, *supra*, note 11; *R. v. Mid-Western News Agency Ltd.* (1965), 47 C.R. 227 (Sask. Dist. Ct.).

[50] *R. v. H.H. Marshall Ltd.* (1982), 69 C.C.C. (2d) 197 (N.S.C.A.).

[51] *Re Laborde and The Queen* (1972), 7 C.C.C. (2d) 86 (Sask. Q.B.).

[52] *R. v. H.H. Marshall Ltd.*, *supra*, note 50.

[53] *R. v. Penthouse International Ltd.*, *supra*, note 11.

[54] Mewett and Manning, *Criminal Law* (Toronto: Butterworths, 1978) at 447.

[55] In *R. v. Lambert* (1965), 47 C.R. 12 (B.C.C.A.), it was held that the section 164 offence is not limited to publications. Accordingly, the section applies to a mailed letter containing obscene matter, even though the letter's contents were intended to be kept private. But see *R. v. Goyer* (1916), 27 C.C.C. 10 (Sask. C.A.).

[56] *R. v. Pink Triangle Press* (1979), 45 C.C.C. (2d) 385 (Ont. Prov. Ct.).

[57] *R. v. Pink Triangle Press* (1980), 51 C.C.C. (2d) 485 (Ont. Co. Ct.).

[58] *Popert v. The Queen* (1981), 19 C.R. (3d) 393 (Ont. C.A.).

[59] *Canada Post Corporation Act*, S.C. 1980-81, c. 54.

[60] *Canada Post Corporation Act*, S.C. 1980-81, c. 54, s. 2(1).

[61] *Customs Tariff*, R.S.C. 1970, c. C-41, Schedule C, Tariff Item 99201.

[62] *Customs Act*, R.S.C. 1970, c. C-40, s. 205 (1).

Chapter 49

Provincial and Municipal Regulation

Although the question of access by children and youths to pornographic material is (apart from the national role of Canadian Radio-television and Telecommunications Commission in regulating the content of radio, television, cable television and pay television) mainly a matter within provincial jurisdiction, it is closely bound up with the federal law of prohibited importations and obscenity. A sexually explicit film or magazine may be prohibited entry into Canada as being "immoral or indecent" under the *Customs Tariff*, thereby pre-empting *provincial* regulation of that film or magazine. The federal law of obscenity operates notwithstanding provincial theatres branch rulings; an obscenity charge may be laid against a film being publicly exhibited with the prior knowledge and concurrence of a provincial theatres branch.

With respect to the access by young persons to pornographic magazines, the relationship between federal and provincial law is also pertinent. If a sexually explicit publication imported into Canada is deemed neither to be "immoral or indecent" under the *Customs Tariff* nor "obscene" under the *Criminal Code*, it may legally be distributed and sold throughout Canada, notwithstanding that its content may make it inappropriate for the perusal of young persons. In response to this situation, some Canadian municipalities have, under provincial enabling legislation, enacted by-laws designed to prevent such publications from being readily accessible to minors.

In this chapter, provincial and municipal initiatives are reviewed concerning the regulation of sexually explicit films and magazines.

Publicly Exhibited Films

Eight provinces have enacted legislation to regulate the public exhibition of films. These provinces are: Nova Scotia, New Brunswick, Quebec, Ontario, Manitoba, Saskatchewan, Alberta and British Columbia. Although Newfoundland has passed legislation which provides for the establishment of a film censorship board,[1] this board has yet to be established. Currently, both Newfoundland and Prince Edward Island adopt the rulings of the New Brunswick board.

More informal film classification procedures have been adopted in the Yukon and the Northwest Territories. In the Northwest Territories, two film classification officers stationed in Yellowknife are responsible for ensuring that all films exhibited have been approved by a provincial classification board. Their current practice is to adopt the rulings of the Alberta board. If controversy precedes the arrival of a certain film, the officers examine how the eight provincial boards have treated the film, and tend to adopt the approach taken by a majority of them. In such cases, the officer may request a pre-screening of the film. Films not yet reviewed by the provincial boards are rejected. The film classification officers also have the authority to seize films under a Yellowknife ordinance. To date, no obscenity charges under the *Criminal Code* have been laid in the Northwest Territories in connection with the exhibition of a film.

In the Yukon, there is no official responsible for screening, classifying or censoring films. According to information received by the Committee, theatre owners act upon the classifications sent by the distributors with every film. These classifications are identical to those used by the British Columbia board.

Table 49.1 provides a summary of the legal mandate, nature, policy and practice of each of the eight provincial boards. This information has been drawn from several sources, including: provincial enabling legislation and regulations; annual reports and other literature published by the boards; and direct communication with board officials. Information gained directly from the respective boards is listed under the following headings: adult policy, child policy, complaints, community involvement, police policy and treatment of three specific films.

Adult Policy. The board's policy concerning the depiction of sexual and violent themes involving adults; the types of scenes that the board would eliminate; and the treatment of the balance of the film, where such cuts are made.

Child Policy. The board's policy concerning the depiction of sexual and violent themes involving children; the types of scenes that would cause the board to edit or ban the film; any differences between this policy and that pertaining to sexual or violent depictions involving adults.

Complaints. The number of formal or informal complaints or inquiries received by the board concerning films being exhibited and special classifications. In some cases, the boards gave the precise number of complaints received over a certain span of time, while in other instances they were only able to provide estimates of the frequency of complaints received.

Community Involvement. The activities in which the board and its members participate in order to gauge, and remain responsive to, community standards.

Police Policy. Based on statements by the boards and law enforcement agencies, the policies of law enforcement agencies within the province concerning the laying of charges for violations of laws governing the exhibition of films.

Treatment of Three Specific Films. Information obtained concerning the responses of the eight boards to three films: Caligula, Pretty Baby and Beau Père.

Table 49.1

Provincial Regulation and Classification of Films

Province/ Name of Board	Source of Board's Legal Authorization
New Brunswick New Brunswick Film Classification Board	*Theatres, Cinématographs and Amusements Act*, R.S.N.B. 1973, c. T-5, as amended by S.N.B. 1977, c. M-11.1; S.N.B. 1978, c. D-11.2; S.N.B. 1979, c. 41, S.N.B. 1979, c. 71, S.N.B. 1980, c. 32. S.O.R. 1963, as amended by N.B. Reg. 64-32, 65-59, 67-123, 68-90, 69-92, 71-67, 75-100, 75-130, 79-100, 82-39, 82-153.
Nova Scotia Amusement Regulations Board	*The Theatres and Amusements Act*, R.S.N.S. 1967, c. 304. As amended by S.N.S. 1972, c.54. N.S. Reg. 97/78 as amended by N.S. Reg. 36/81; N.S. Reg. 96/ 81; N.S. Reg. 130/82; N.S. Reg. 16/83; N.S. Reg. 48/83.
Quebec Bureau de Surveillance du Cinéma	*An Act Respecting the Cinéma*, R.S.Q. 1977, c. C-18 Consolidating the following: S.R. 1964, c. 55, as amended by S.Q. 1967 c. 17, S.Q. 1967 c. 22., S.Q. 1969, c. 26, S.Q. 1975, c. 14, O.C. 4130-75 of 17.09. 75, (1975) 107 G.O. II, 5127.
Ontario Ontario Board of Censors	*The Theatres Act*, R.S.O. 1980, c. 498. Reg. 931, R.R.O. 1980 as amended by O. Reg. 138/81, O. Reg. 438/81; O. Reg. 600/81; O. Reg. 29/82.
Manitoba Manitoba Film Classification Board	*The Amusements Act*, R.S.M. 1970, c. A70, as amended by S.M. 1979, c. 28. M.R. 49/75, as amended by M.R. 103/76; M.R. 65/78; M.R. 2/ 79; M.R. 115/80; M.R. 111/82.
Saskatchewan Saskatchewan Film Classification Board	*The Theatres and Cinématographs Act*, R.S.S. 1978, c. T-11. S. Reg. 1 (O.C. 1873/81).
Alberta Alberta Motion Picture Censor Board	*Amusements Act*, R.S.A. 1980, c. A-41. *Amusements Act* General Regulations, Alta. Reg. 72/57 as amended by Alta. Reg. 261/82; Alta. Reg. 8/83.
British Columbia British Columbia Film Classification Branch	*Motion Picture Act*, R.S.B.C. 1979, c. 284, as amended by S.B.C. 1981, c. 20; ss. 48-9. B.C. Reg. 221/70, as amended by B.C. Reg. 92/79; B.C. Reg. 358/79; B.C. Reg. 459/81.

Table 49.1 *(Continued)*

Provincial Regulation and Classification of Films

Province/ Name of Board	Government Branch
New Brunswick New Brunswick Film Classification Board	Department of Youth, Recreation and Cultural Resources
Nova Scotia Amusement Regulations Board	Department of Consumer Affairs
Quebec Bureau de Surveillance du Cinéma	Ministry of Cultural Affairs (Ministère des Affaires Culturelles)
Ontario Ontario Board of Censors	Department of Consumer and Commercial Relations
Manitoba Manitoba Film Classification Board	Department of Tourism, Recreation and Cultural Affairs
Saskatchewan Saskatchewan Film Classification Board	Saskatchewan Consumer and Commercial Affairs
Alberta Alberta Motion Picture Censor Board	Alberta Culture, Division of Cultural Development
British Columbia British Columbia Film Classification Branch	Ministry of the Attorney General

Table 49.1 *(Continued)*

Provincial Regulation and Classification of Films

Province/ Name of Board	Structure of Board
New Brunswick New Brunswick Film Classification Board	Three or more persons including a chairman. (At present, there are six part-time members).
Nova Scotia Amusement Regulations Board	Chairman and nine part-time members
Quebec Bureau de Surveillance du Cinéma	Director and other members appointed by the Lieutenant-Governor.
Ontario Ontario Board of Censors	Director serving as Chairman, an Assistant Director serving as Vice-Chairman and such other persons as the Lieutenant Governor in Council appoints . At present, there are 30 members serving on a part-time basis. At least five members must be present in order to classify a film.
Manitoba Manitoba Film Classification Board	Up to 15 part-time members, including a chairman and vice-chairman. Each film is viewed by three members who vote on its classification.
Saskatchewan Saskatchewan Film Classification Board	Director (Chairman of the Board) and between one and four other members (at present there are two other members).
Alberta Alberta Motion Picture Censor Board	Chairman and four members. Majority rule.
British Columbia British Colombia Film Classification Branch	Film classification director and two other appointed employees designated as film classifiers. Majority rule.

Table 49.1 *(Continued)*

Provincial Regulation and Classification of Films

Province/ Name of Board	Functions of Board
New Brunswick New Brunswick Film Classification Board	Classify or prohibit films. Can request cuts, preferring the distributor to make them.
Nova Scotia Amusement Regulations Board	Classifies or prohibits. Does not cut. Requires the distributor to make cuts.
Quebec Bureau de Surveillance du Cinéma	Classify or prohibit films. Can request cuts, making the distributor to make cuts. Has the power to refuse to grant a visa of approval.
Ontario Ontario Board of Censors	Has the power to reject any film, to censor any film and when authorized by the person who submitted the film, to edit any portion of the film that it does not approve for exhibition. Board prefers the distributor to make cuts. Board also classifies all the films submitted to it.
Manitoba Manitoba Film Classification Board	Pure classification. The board does not edit or reject films. Also, under the Act, if deemed desirable, the Lieutenant Governor in Council may co-operate with the governments of other provinces in Canada in appointing joint film classification board. (As yet no such initiative has been taken.)
Saskatchewan Saskatchewan Film Classification Board	Has the power to reject films, and to remove any portion of a film that it does not approve for exhibition. Classifies films. Board prefers to recommend cuts to the distributor.
Alberta Alberta Motion Picture Censor Board	Has the power to reject films and to eliminate any sub-titles, words or scenes that it considers objectionable before approving the film. Board also classifies films. Rejected films may be re-submitted after a period of no less than six months.
British Columbia British Columbia Film Classification Branch	Has the power to reject films, to make approval contingent upon the cutting of the film by the person who submitted it, and to classify films. Board also will make cuts requested by the distributor.

Table 49.1 *(Continued)*

Provincial Regulation and Classification of Films

Province/ Name of Board	Adult Policy
New Brunswick New Brunswick Film Classification Board	Will not allow scenes of penetration, ejaculation or excessive sex and violence. The British version of Caligula was shown with no cuts requested.
Nova Scotia Amusement Regulations Board	Will not allow scenes of penetration, ejaculation, or excessive sex and violence. Refused to license the version of Caligula altered for Ontario.
Quebec Bureau de Surveillance du Cinéma	No written policy formula has been adopted, in view of Quebec's "constantly changing pluralistic society"; however, the Board is guided by two general principles: (i) judgment is not passed on films according to their themes, but upon the manner in which they are treated, on both the psychological level; and (ii) the goals of protecting minors and maintaining freedom of choice for persons 18 years of age and older. Caligula (American version) shown with cuts.
Ontario Ontario Board of Censors	Will not allow: explicit portrayal of sexual activity; undue and prolonged scenes of violence, torture, blood-letting; ill-treatment of animals; undue or prolonged emphasis on genitalia; sexual exploitation of children. British version of Caligula shown with cuts.
Manitoba Manitoba Film Classification Board	Permit issued by Board is not a licence to show the film in Manitoba. Police can and have charged films shown with a licence. Film will be classified as "Restricted Adult" if it contains depictions of any of the following: oral sex; fellatio; buggery; cunnilingus; penetration; bestiality; masturbation; ejaculation; actual portrayal of child pornography; graphic portrayal of genital close-ups; extreme acts of violence with sexual activity. British version of Caligula approved and shown.
Saskatchewan Saskatchewan Film Classification Board	The Board views scenes in the context of the whole film. Penetration, ejaculation and long scenes depicting sexual acts are cut. British version of Caligula shown in Saskatchewan.
Alberta Alberta Motion Picture Censor Board	The Board does not cut films. Will not allow scenes of penetration, ejaculation and violence. The British version of Caligula was shown. Police charged movie Caligula.
British Columbia British Columbia Film Classification Branch	Does not allow scenes of penetration, ejaculation, intercourse and violence. American version of Caligula approved and shown.

Table 49.1 *(Continued)*

Provincial Regulation and Classification of Films

Province/ Name of Board	Child Policy
New Brunswick New Brunswick Film Classification Board	In determining what movies should be classified, rejected or cut, the same standards apply for adults and children when involved in sex scenes. If a movie were to be submitted with more explicit scenes involving children, Board Policy would be reviewed. Adults can take youth to restricted movie. Pretty Baby and Tin Drum passed and shown in New Brunswick.
Nova Scotia Amusement Regulations Board	The Board will not pass films that physically or sexually exploit children. Pretty Baby and Tin Drum approved.
Quebec Bureau de Surveillance du Cinéma	The general goal of the Board is to reconcile the objectives of protecting minors and of allowing freedom of choice for adults. Pretty Baby and Beau Père approved and shown.
Ontario Ontario Board of Censors	Rejects anything that sexually exploits children in any manner. Cuts or banning of films are made on the basis of Board policy. Under the Act, no person apparently under 12 years of age not accompanied by a person apparently 16 years or more of age shall be permitted to purchase a ticket of admission or be granted admission to an exhibition of moving pictures in a theatre: (a) after 7:30 p.m. on any day; (b) during the school term of public and secondary schools in the municipality in which the theatre is situated, except — (i) during school holidays between the hours of 9:00 a.m. and 7:30 p.m., and (ii) during any other day during the term between the hours of 3:30 p.m. and 7:30 p.m. Pretty Baby and Beau Père banned. Cuts to Tin Drum and then played.

Table 49.1 *(Continued)*

Provincial Regulation and Classification of Films

Province/ Name of Board	Child Policy
Manitoba Manitoba Film Classification Board	Films showing excessive sex and violence are limited to persons 18 and over. Films portraying children under 15 in sexual situations are classified as adult parental guidance. Films portraying minors in sexually explicit scenes are classified as restricted adult. Pretty Baby, Blue Lagoon and Beau Père have been shown in Manitoba.
Saskatchewan Saskatchewan Film Classification Board	Criteria same for adults and children when children are subject matter of film. Pretty Baby rejected in 1978. This ruling was appealed and upheld. As a result, the current Board was set up. Categories to be clearly displayed at theatres. Beau Père submitted and approved in 1982.
Alberta Alberta Motion Picture Censor Board	Pretty Baby shown. Beau Père passed but not shown.
British Columbia British Columbia Film Classification Branch	Seeks to protect children by ensuring theatres have signs posted clearly indicating classification of film being shown. Under restricted category, children can enter with a parent. Beau Père and Pretty Baby passed and shown.

Table 49.1 ***(Continued)***

Provincial Regulation and Classification of Films

Province/ Name of Board	Film Classification/Categories
New Brunswick New Brunswick Film Classification Board	*General:* Suitable for all ages. *Adult:* Suitable for adults 16 and over. Not theatres' responsibility to keep children out. *Restricted:* To 18 years and over; adults can take youths in. Adult means parent or legal guardian.
Nova Scotia Amusement Regulations Board	*General:* Admission to all persons. *Adult:* Those 14 years and older admitted. Under 14 must be accompanied by an adult. *Restricted:* No one under 18 admitted.
Quebec Bureau de Surveillance du Cinéma	*A: Film pour Tous* — viewers of all ages admitted. *B: Film Pour Adolescents et Adultes* — only viewers at least 14 years of age admitted. *C: Film Réservé aux Adultes* — only viewers at least 18 years of age admitted.
Ontario Ontario Board of Censors	*Family viewing*, all ages. *Parental guidance advised. Adult accompaniment required* for age of 14 restricted to 14 and over unless accompanied by adult. *Restricted* — no one under 18 admitted.
Manitoba Manitoba Film Classification Board	*General:* Family viewing, all ages. *Mature:* Parental discretion, all ages. *Mature:* Suitable for family viewing. *Mature:* Not suitable for children. *Adult:* Parental guidance parent must accompany children. *Restricted:* no one under 18 admitted.
Saskatchewan Saskatchewan Film Classification Board	*General:* No age restrictions. *Adult:* Parental guidance advised. *Restricted Adult:* No child under 18 admitted, unless accompanied by a parent. *Special X:* No one under 18 admitted.
Alberta Alberta Motion Picture Censor Board	*General:* No age restrictions. *Parental Guidance:* Parental guidance advised, no age restrictions. *Mature:* Under 14 must be accompanied by adult. *Restricted Adult:* No one under 18 admitted.
British Columbia British Columbia Film Classification Branch	*General:* No age restrictions. *Mature:* Parental guidance advised. *Restricted:* No person under 18 admitted unless accompanied by a parent or responsible adult. Theatre must display sign indicating content of film.

Table 49.1 ***(Continued)***

Provincial Regulation and Classification of Films

Province/ Name of Board	Appeal Procedure
New Brunswick New Brunswick Film Classification Board	No statutory authorization.
Nova Scotia Amusement Regulations Board	No statutory authorization.
Quebec Bureau de Surveillance du Cinéma	Every person who has submitted a film to the Board may, if not satisfied with the decision rendered, appeal therefrom to the Board sitting in review. Appeals are initiated by means of a registered letter addressed to the chairman. The Board will then examine the film and arrive at the final decision.
Ontario Ontario Board of Censors	Appeal procedure is set by the Board rather than by statute or regulation. Distributors objecting to the Board's recommendation may make submissions in writing to the Board within 15 days of mailing or delivery of the Board's report. Such submissions will include the preferred classification or treatment of the film together with reasons for the submission. The Board will review any such submission forthwith considering the reasons set out by the distributor. The Board or any member may view (or review) the film. The Board may request a meeting with the distributor to discuss his submission. A decision will be rendered within 10 working days after the receipt of a submission. The Board's Office Manager will advise the distributor of the Board's decision and reasons (including any minority view).

Table 49.1 *(Continued)*

Provincial Regulation and Classification of Films

Province/ Name of Board	Appeal Procedure
Manitoba Manitoba Film Classification Board	The Minister may appoint an appeal board consisting of at least five persons. The Minister is also empowered to co-operate with the governments of other provinces of Canada in appointing a joint appeal board consisting of not more than 10 persons nominated by the Minister and by the other governments represented on the joint film classification board.
Saskatchewan Saskatchewan Film Classification Board	Appointed committee hears all appeals. Its decisions are final.
Alberta Alberta Motion Picture Censor Board	Appeal board consists of three appointed persons. Appeals are made within 30 days of Censor Board's decision to condemn the film. Appeals must be made in writing, must state the reason for appealing, and must contain a declaration that the film has not been altered since it was received back from the Board of Censors.
British Columbia British Columbia Film Classification Branch	Appeal board consists of a chairman and two other persons appointed by the Lieutenant Governor (Act section 3(1)). Every person who appeals to the appeal board shall file with the Director a notice of appeal in the form prescribed by the Director, and shall pay the prescribed fee. The appeal board's decision and order is final and binding on the Director and every other person affected by it.

Table 49.1 *(Continued)*

Provincial Regulation and Classification of Films

Province/ Name of Board	Regulation of Advertising
New Brunswick New Brunswick Film Classification Board	A theatre owner must display at the entrance to the theatre a sign at least 8" x 12" indicating the classification of the film to be exhibited. If films of more than one classification are to be exhibited, the classification with the more mature age requirement must be displayed. A theatre owner shall clearly indicate in the advertisement the film's classification.
Nova Scotia Amusement Regulations Board	No statutory authorization.
Quebec Bureau de Surveillance du Cinéma	No pictorial or cinematographic film shall be the subject of an advertisement in a newspaper, as defined in *The Press Act*, in which an advertisement cut, drawing or engraving is used, unless such cut, drawing or engraving be part of a poster or of a film previously approved by the Board. Every person who wishes to use a poster (as defined by regulation) for advertising a pictorial or cinematographic film performance, is required to submit the same for the approval of the Board, before the poster may be loaned, rented or transmitted to be exhibited. The class of spectators determined in the visa issued by the Director must be posted in a conspicuous place at the entrance to every moving picture or drive-in theatre where the film is exhibited. When films with different classifications are shown at the same performance only the most restrictive classification may be posted.
Ontario Ontario Board of Censors	All advertising matter in connection with a film classified by the Board as adult or restricted entertainment shall indicate that the film is so classified. Appointed inspectors under the authority of the Director have the power to seize, remove and hold any advertising that they believe on reasonable and probable grounds was exhibited or was or is used contrary to the Act. The Board has the power to approve, prohibit or regulate advertising in Ontario in connection with any film or the exhibition thereof. No person shall use or display any advertising matter in connection with any film or the exhibition thereof unless a sample of the advertising has been submitted to and approved by the Board. Theatres exhibiting "restricted" or "adult" entertainment films must have signs of prescribed size and shape hung under their canopies to specify the classification of the film. Advertising shall also indicate any other information that the Board requires.

Table 49.1 *(Continued)*

Provincial Regulation and Classification of Films

Province/ Name of Board	Regulation of Advertising
Manitoba Manitoba Film Classification Board	The Board is empowered to control and regulate advertising of films and slides intended to be classified for exhibition. The Board, or any peace officer or inspector, may order the removal from all public places of any advertisement relating to any film or slide if the advertisement is of an immoral, obscene or indecent nature or depicts any murder, robbery, criminal assault or the killing of any person. All advertising instructions as to film classification and content initiated by the Board shall be carried out by the persons to whom the instructions are issued. Theatres must clearly and prominently display a notice in the form and of a size approved by the Board showing the classification of the film being exhibited. The classification must also be displayed in any newspaper or other advertising medium used to advertise the film.
Saskatchewan Saskatchewan Film Classification Board	The Board may require a person to submit to it any poster, lithograph or other advertisements depicting scenes from, and intended to be used or displayed in connection with a film to be exhibited in Saskatchewan; and the Board may prohibit the use or further use of any such posters, lithographs or advertisements that it considers unfit for public exhibition or display. No person shall insert or cause to be inserted in a newspaper or other periodical an advertisement describing or in any way dealing with a film, that: (a) gives details of a criminal action or depicts criminals as admirable or heroic characters; (b) is immoral or obscene or suggests lewdness or indecency; (c) offers evil suggestions to the minds of persons or children; or (d) is for any other reason injurious to public morals or opposed to the public welfare. The Board may require any person to submit before publication, for its approval or rejection, the proofs or proposed advertisements. The Board shall determine whether the public should be warned of potentially offensive scenes, language or violence contained in any film. No film that has been classified may be publicly exhibited unless:

Table 49.1 *(Continued)*

Provincial Regulation and Classification of Films

Province/ Name of Board	Regulation of Advertising
Saskatchewan Film Classification Board— *(Cont'd)*	(a) all graphic or written advertisement for the film distributed or posted after the date of classification include the correct classification and any warnings; and (b) the classification and any warnings are displayed in a part of the theatre so as to be readily seen by the public before paying admission.
Alberta Alberta Motion Picture Censor Board	When so requested, a film exchange shall submit to the Board of Censors all advertising material of a particular feature picture for approval or otherwise. The Board of Censors has the power to examine all posters, heralds, hand-bills, cuts, newspaper and periodical advertising matter in connection with films and film displays, and approve or disapprove of same. Any person using or displaying any advertising matter after it has been condemned or disapproved of by the Censor Board, shall be liable on summary conviction to a fine of not less than $25 and not more than $200, with costs. Advertising must prominently display the film's classification, and any other comments the Board considers advisable.
British Columbia British Columbia Film Classification Branch	Director may approve, prohibit or regulate advertising. No person shall use or display advertising matter in connection with a film or its exhibition unless a sample of the advertising matter is first approved by the Director. The Director may require, as a condition of approval of the advertising matter that it contain words describing the classification of the film together with other comments the Director considers advisable. All advertising matter in connection with a film shall be submitted to the Director before the film is exhibited. The advertising of "Mature" films must convey the words "Adult Entertainment" in all media of communication used for advertising. Advertising of all "restricted" films must display the province's "Restricted" symbol and the words "No Admittance to Persons Under Eighteen". In radio advertising for such pictures, the words "Restricted Admission" must be clearly spoken. Before approving any advertising in connection with a film, the Director may order that a warning caption be displayed in all advertising and thereupon the words supplied by the Director shall be used in all such advertising.

Table 49.1 *(Continued)*

Provincial Regulation and Classification of Films

Province/ Name of Board	Regulation of Film Trailers
New Brunswick New Brunswick Film Classification Board	Any film determined by the Board to be a trailer shall only be exhibited in the following manner: • trailers classified by the Board as restricted entertainment shall only be exhibited with films classified as restricted entertainment; • trailers classified by the Board as adult entertainment shall only be exhibited with films classified as adult or restricted entertainment; • trailers classified by the Board as general entertainment may be exhibited with any film approved by the Board.
Nova Scotia Amusement Regulations Board	No statutory authorization.
Quebec Bureau de Surveillance du Cinéma	The Bureau examines and classifies trailers.
Ontario Ontario Board of Censors	The Board screens trailers.
Manitoba Manitoba Film Classification Board	No statutory authorization.
Saskatchewan Saskatchewan Film Classification Board	In practice, the Board recommends editing of unsuitable trailers.
Alberta Alberta Motion Picture Censor Board	No statutory authorization.
British Columbia British Columbia Film Classification Branch	The Director shall supply a "restricted film strip" for each trailer (and print) of a film classified as "restricted" entertainment. The "restricted film strip" shall be inserted in the trailer (or print) at the Director's office under supervision.

Table 49.1 *(Continued)*

Provincial Regulation and Classification of Films

Province/ Name of Board	Drive-in Theatres
New Brunswick New Brunswick Film Classification Board	No drive-in theatre shall be established having any building, fence or construction within 15 metres from the centre of the public highway.
Nova Scotia Amusement Regulations Board	No screen tower shall be so placed so that any projection screen is visible from a highway.
Quebec Bureau de Surveillance du Cinéma	Films for adults only shall not be exhibited in outdoor theatres.
Ontario Ontario Board of Censors	The Director can approve plans for construction of a drive-in theatre only if the application for construction is submitted with a copy of the resolution of the council of the local municipality authorizing the construction.
Manitoba Manitoba Film Classification Board	No statutory authorization.
Saskatchewan Saskatchewan Film Classification Board	No licence is to be granted for a new drive-in theatre unless the screen tower is placed so that its viewing surface is not visible from a numbered provincial highway. A film designated by the Board as "not to be shown in drive-in theatres" shall not be shown in a drive-in.
Alberta Alberta Motion Picture Censor Board	No statutory authorization.
British Columbia British Columbia Film Classification Branch	Certain films are classified as "Restricted Entertainment — Designated Theatres Only" and cannot be shown at drive-ins.

Table 49.1 *(Continued)*

Provincial Regulation and Classification of Films

Province/ Name of Board	Complaints
New Brunswick New Brunswick Film Classification Board	Receives about 10-12 formal complaints a year. Numerous informal calls or inquiries are received about the classification or acceptance/rejection of certain films.
Nova Scotia Amusement Regulations Board	Receives about six complaints a month.
Quebec Bureau de surveillance du cinéma	No information received.
Ontario Ontario Board of Censors	70 oral and written complaints for the one year period prior to July, 1982.
Manitoba Manitoba Film Classification Board	Receives one to two per month. Yearly total, 10 – 14.
Saskatchewan Saskatchewan Film Classification Board	Registry of complaints implemented in January, 1982. Verbal complaints received at the rate of one or two a month.
Alberta Alberta Motion Picture Censor Board	10-15 written complaints annually, and 10-15 oral for a total of 20-30 annually. The Board will investigate complaints and alter ratings in response to complaints.
British Columbia British Columbia Film Classification Branch	1980 — 30 1981 — 41 The movie Caligula received a total of seven complaints.

Table 49.1 *(Continued)*

Provincial Regulation and Classification of Films

Province/ Name of Board	Community Involvement by the Board
New Brunswick New Brunswick Film Classification Board	Meets with various groups to discuss the role of the Board. Invites responses from the public at these presentations and anyone else who wishes to express their opinion. Attends conference every two years for Theatre Branch Directors/ Chairmen to determine what is happening in other provinces.
Nova Scotia Amusement Regulations Board	Public speaking engagements, conferences, letters and phone calls. Members consult friends, neighbours and business associates. Informal research.
Quebec Bureau de Surveillance du Cinéma	1. Regional inspection Service: five travelling inspectors cover all of Quebec, throughout the year, visiting more than 500 film houses each month. In each of his/her regions an inspector must gather all possible information concerning the current state of public opinion, viewer reactions and the opinions expressed in the local and regional press. This is followed by regular written reports designed to inform the director of public opinion. 2. Public Relations Service: a direct dialogue with the public: (a) a record is made of the date of every call received by the Board, the name and address of the caller and the nature of the call. Many calls are followed up with a letter from the Board explaining its position, and also with Board publications. (b) Every letter from a citizen or group is answered. 3. Research and Documentation Service: All relevant articles, reports or studies from over 150 magazines and newspapers are collected, catalogued, and filed to be kept available for the Board's reference, and to enable the Board to gauge public opinion. 4. In order to inform and educate, the Board puts out six regular publications: (a) Monthly list of films according to classification; (b) Monthly list of full length films and short subjects according to country of origin and language;

Table 49.1 *(Continued)*

Provincial Regulation and Classification of Films

Province/ Name of Board	Community Involvement by the Board
Quebec Bureau de Surveillance du Cinéma—*(Cont'd)*	(c) Bi-annual list of film houses in Quebec; (d) Cinéma in Quebec (a list of addresses); (e) The Journal of Films and Viewer Categories (published every 18 months for the last 70 years). (f) Bi-monthly report published from September to June (20 issues per year) reproducing articles, reports, and studies from reputable periodicals. It is divided into three sections: i) Society; ii) Cinéma and Audio-visual Issues; and iii) Censorship.
Ontario Ontario Board of Censors	Board puts on presentations to various groups and invites feedback. Survey and public opinion polls. Monitors letters and complaints received. Reviews newspapers.
Manitoba Manitoba Film Classification Board	The Board puts on presentations. Membership of Board rotated from different sectors of the community. Considers opinions of personnel and feedback from presentations.
Saskatchewan Saskatchewan Film Classification Board	The Board puts on presentations to any interested groups. Community standards developed as a result of input from presentations, other Boards, phone calls and theatre managers.
Alberta Alberta Motion Picture Censor Board	The Board monitors what is happening in other provinces. The Board uses feedback from the community in trying to reflect community standards. Board puts on presentations for benefit of schools, groups and parents.
British Columbia British Columbia Film Classification Branch	Talks and lectures to various groups. The Board is receptive to public opinion. The Director is in constant touch with other Provincial boards.

Table 49.1 *(Continued)*

Provincial Regulation and Classification of Films

Province/ Name of Board	Classification, Cutting and Rejection of Films (35 mm and/or 16 mm full length feature films only)		
New Brunswick New Brunswick Film Classification Board	*Year 80/81*:	Total Examined	289
		Approved	283
		Restricted	120
		Cut	0
		Rejected	6
	35 mm only.		
Nova Scotia Amusement Regulations Board	*Year 79/80*:	Total Examined	283
		Approved	281
		Restricted	114
		Cut	0
		Rejected	2
	35 mm only. Cuts by distributor only; Board does not make cuts.		
Quebec Bureau de Surveillance du Cinéma	*Year 80/81*:	Total Examined	970
		Approved	970
		Restricted	247
		Cut	0
		Rejected	0
	Annual report does not specify whether these figures refer to both 16 and 35 mm feature films, or only to 35 mm films.		
Ontario Ontario Board of Censors	*Year 80/81*:	Total Examined	1154
		Approved	1143
		Restricted	337
		Cut	64
		Rejected	5
	(With six films pending decision at end of fiscal year. 35 mm and 16 mm).		

Table 49.1 *(Continued)*

Provincial Regulation and Classification of Films

Province/ Name of Board	Classification, Cutting and Rejection of Films (35 mm and/or 16 mm full length feature films only)
Manitoba Manitoba Film Classification Board	*Year 80/81:* Total Examined 399 Approved 399 Restricted 70 Cut 0 Rejected 0 35 mm only.
Saskatchewan Saskatchewan Film Classification Board	*Year 80/81:* Total Examined 403 Approved 400 Restricted 168 Cut 10 Rejected 3 35 and 16 mm. Current policy is to have the distributor make the cuts; consequently, they do not monitor the number of films needing cuts.
Alberta Alberta Motion Picture Censor Board	*Year 80/81:* Total Examined 644 Approved: 635 Restricted 196 Cut 0 Rejected 9 35 mm only. Films submitted to Alberta have been classified elsewhere, and as such, necessitate few if any cuts.
British Columbia British Columbia Film Classification Branch	*Year 1980:* Total Examined 672 Approved 669 Restricted 159 Cut 14 Rejected 3 35 and 16 mm.

Table 49.1 *(Continued)*

Provincial Regulation and Classification of Films

Province/ Name of Board	Police Policy
New Brunswick New Brunswick Film Classification Board	No charges, 1979-81. Police can lay charges without consulting Crown Counsel.
Nova Scotia Amusement Regulations Board	Police laid one charge in 1979. Police can lay charges without consulting Crown Counsel.
Quebec Bureau de Surveillance du Cinéma	No information received.
Ontario Ontario Board of Censors	Police can lay charges without consulting Crown Counsel.
Manitoba Manitoba Film Classification Board	One charge in 1979. None for 1980 and 1981. As of January, 1981, police must consult with Crown Counsel.
Saskatchewan Saskatchewan Film Classification Board	No charges, 1979-81. Police can lay charges without consulting Crown Counsel.
Alberta Alberta Motion Picture Censor Board	No charges in 1979 and 1980. One charge in 1981. Attorney General can and will instruct police to lay charges.
British Columbia British Columbia Film Classification Branch	No charges, 1979-81. Police do not lay charges unless approved by Crown Counsel.

Table 49.1 *(Concluded)*

Provincial Regulation and Classification of Films

Province/ Name of Board	Review of Three Films			
New Brunswick		*A*	*NA*	*S*
	Caligula	x	—	xBV
New Brunswick Film	Pretty Baby	x	—	x
Classification Board	Beau Père		never submitted	
Nova Scotia		*A*	*NA*	*S*
	Caligula	—	x	—
Amusement	Pretty Baby	x	—	x
Regulations Board	Beau Père		never submitted	
Quebec		*A*	*NA*	*S*
	Caligula	x	—	xAV/WC
Bureau de	Pretty Baby	x	—	x
Surveillance du	Beau Père	x	—	x
Cinéma				
Ontario		*A*	*NA*	*S*
	Caligula	x	—	xBV/WC
Ontario Board of	Pretty Baby	—	x	—
Censors	Beau Père	—	x	—
Manitoba		*A*	*NA*	*S*
	Caligula	x	—	xBV
Manitoba Film	Pretty Baby	x	—	x
Classification Board	Beau Père	x	—	x
Ssakatchewan		*A*	*NA*	*S*
	Caligula	x	—	xBV
Saskatchewan Film	Pretty Baby	—	x	—
Classification Board	Beau Père	x	—	—
Alberta		*A*	*NA*	*S*
	Caligula	x	—	xBV
Alberta Motion	Pretty Baby	x	—	x
Picture Censor Board	Beau Père	x	—	—
British Columbia		*A*	*NA*	*S*
	Caligula	x	—	xAV
British Columbia Film	Pretty Baby	x	—	x
Classification Branch	Beau Père	x	—	x

Notes:

1. Key to classification of three films is: A–approved; NA–not approved; S–shown; AV–American Version; BV–British Version; and WC–with cuts.

2. When this table was compiled certain sections of Quebec's *An Act Respecting the Cinéma*, R.S.Q. 1977, c. C-18, had yet to be proclaimed in force (Sections 12 to 35, 38, 39 and 42 to 44). Also, section 94 of *An Act Respecting the Cinéma*, S.Q. 1975, c. 14, has never been proclaimed in force; this latter section repeals the original *Cinéma Act*, R.S.Q. 1964, c. 55. Should the sections in question be proclaimed, certain aspects of the process by which film exhibition is regulated in Quebec would be altered significantly (particularly the procedure for appealing or reviewing film classifications).

3. The recent introduction in the Quebec legislature of Bill 109, *An Act Respecting the Cinéma and Video Industry*. Given its first reading on December 17, 1982, this proposed legislation, if passed, would make several important changes to the law, including widening its ambit to encompass the growing video industry.

With respect to the information derived from the boards' annual reports, several points should be noted. In comparing the numbers of films viewed by the boards for 1980-81, only the figures pertaining to full length feature films were considered. For some provinces, information was available only on the number of 35 millimetre films reviewed. Where available, information on both 16 and 35 millimetre films is included. Further, the number of films listed as having been cut refers only to those films edited by the boards themselves. Since some boards request the film distributors to make excisions, the total number of films released in edited versions is greater than that indicated in Table 49.1. Finally, the "restricted entry" category refers to the most restrictive film classification in each province.

Approval and Showing of Specific Films

The provincial boards' review and classification of three films, *Caligula*, *Pretty Baby* and *Beau Père* provides an indication of their approaches to different controversial film depictions of explicit types of sexual behaviour. The film *Caligula* contains scenes of explicit sexual acts and of violence, including: stabbings, decapitations, mass murder, rape and the mutilation of male and female genitalia. In addition, the film portrays acts of incest, necrophilia, group sex, male and female homosexuality, oral-genital sex, sexual intercourse and buggery. The film exists in two different versions, an American (14,130 feet in length and running 156 minutes) and a British (13,230 feet in length and running 146 minutes). The British version contains 20 fewer minutes of explicit sex and violence than does the American, and includes 10 minutes of plot development scenes not found in the American version.

The films *Pretty Baby* and *Beau Père* deal with themes of child sexual abuse and exploitation. The former production concerns a 12 year-old prostitute and contains scenes of full and partial nudity involving the child actress who appeared in the title role. *Beau Père* concerns an incestuous relationship between a 15 year-old girl and her father and contains at least one scene in which the breasts of the young actress playing the incest victim are exposed.

The showing of *Caligula* was approved by seven of eight provincial boards, five of which approved the British version (one with cuts) and two the American version (one with cuts).

Pretty Baby was approved by six of eight boards without cuts. *Beau Père* was not submitted for approval to two boards, was not approved by one and was approved by five boards. The findings in relation to the showing of these three films indicate that:

1. Policies vary considerably from one part of the country to another;
2. Sexually explicit scenes depicting violent assaults have been shown in most parts of Canada; and
3. Movies dealing with themes of child sexual abuse and exploitation have been shown in most provinces across Canada.

In considering these findings, the Committee believes that more uniform and specific criteria must be developed and applied in relation to the film depiction of children and youths in scenes involving child sexual abuse and exploitation. In this regard, we believe that there must be a safeguard in all parts of Canada that films of this kind be prohibited — absolutely. Such movies depict children in sexual scenes which are degrading and exploitative.

Municipal By-laws

The *Constitution Act, 1867* confers on the provinces jurisdiction to make laws relating to "Property and Civil Rights in the Province",[2] "Shop, Saloon, Tavern, Auctioneer, and other licences in order to the raising of a Revenue for Provincial, local, or Municipal Purposes",[3] and "generally all matters of a merely local or private nature in the province",[4] and empowers each province to enforce its validly enacted laws by means of fine, penalty or imprisonment.[5] One form which this legislative jurisdiction has taken is the provincial regulation of businesses which provide adult-oriented entertainments (for example, body-rub parlours and escort services) or which offer for view or sale sexually explicit publications (e.g., magazines, "peep-shows" and video cassettes). Typically, a province establishes this regulatory scheme by enacting broadly worded laws that grant municipalities the authority to license, regulate and govern certain businesses or occupations.[6] It is then left to each municipality to specify, through the enactment of municipal by-laws, the precise form which this regulation will take with respect to different kinds of businesses operating within the municipality.

For example, Ontario's *Municipal Act*[7] provides that "by-laws may be passed by the councils of all municipalities for licensing, regulating, governing, classifying and inspecting adult entertainment parlours . . . " and that a by-law passed under this section "may prohibit any person carrying on or engaged in the trade, calling, business or occupation for which a license is required under this section *from permitting any person under the age of eighteen years to enter or remain in the adult entertainment parlour or any part thereof*".[8]

The Ontario *Act* then proceeds to define "adult entertainment parlour" and related terms. An "adult entertainment parlour" means "any premises or part thereof in which is provided, in pursuance of a trade, calling, business or occupation, goods or services appealing to or designed to appeal to erotic or sexual appetites or inclinations".[9] "Goods" is defined as including books, magazines, pictures, slides, film, phonograph records, prerecorded magnetic tape and any other viewing or listening matter.[10] "Services" includes activities, facilities, performances, exhibitions, viewings and encounters;[11] "services designed to appeal to erotic or sexual appetites or inclinations" is defined as including: services of which a principal feature or characteristic is the nudity or partial nudity of any person; and services in respect of which the word "nude", "naked", "topless", "bottomless", "sexy", or any other word or any picture,

symbol or representation having like meaning or implication is used in any advertisement.[12]

This provincial enabling legislation has been used by Ontario municipalities not only to regulate the operation of businesses which are quintessentially "adult entertainment parlours" (e.g., "sex shops"),[13] but also to regulate the accessibility to young persons of sexually explicit publications sold or displayed within the municipality (e.g., in variety stores). In Ontario, the Town of Newmarket, the City of Burlington and the Metropolitan Council of Toronto, among others, have enacted such by-laws. In British Columbia, the City of Victoria has passed a by-law of wider scope.

At their best, the various municipal by-laws reviewed by the Committee are an effective method of regulating certain business and other activities in a manner specified by the council of a given municipality.[14] Delegated legislation of this sort must, however, accord with certain legal principles in order to withstand challenges to its validity in the courts.

First, **a municipality has no greater power than the legislature which created it.** It cannot enact, nor can a province validly authorize it to enact, a by-law which in pith and substance relates to a matter exclusively within federal constitutional jurisdiction.[15] It was on this ground that the Supreme Court of Canada declared *ultra vires* a Calgary by-law relating to the use of city streets for the purpose of prostitution. The essential character of the by-law was a prohibition on prostitutes from working the streets and the by-law was accordingly deemed to have invaded Parliament's exclusive legislative power in relation to the criminal law.[16]

Second, **even where the "pith and substance" of a municipal by-law concerns a matter clearly within provincial legislative jurisdiction, the power of the municipality to legislate in the area must be set out in provincial enabling legislation. The municipality has only such powers as the legislature chooses to confer on it.**

Third, **a municipal by-law must be explicit enough so that a citizen who seeks to comply with its terms is able, by reading the by-law, to ascertain his or her obligations under it.** As Mr. Justice Kelly of the Ontario Court of Appeal has observed:[17]

> When a municipal council purports to legislate under the powers found in the *Municipal Act* and thereby creates obligations to be observed by its citizens, the failure to observe which attracts punishment, it is to be expected that the by-law creating such obligations will itself be so explicit that a well-intentioned citizen seeking to observe the provisions of the by-law may, from a reading of the by-law, without the enlargements of its requirement by the order of a municipal servant, be able to satisfy himself that he has complied with its requirements.

Non-compliance with this principle proved fatal to the validity of a Hamilton, Ontario by-law designed to keep "erotic goods" (including magazines) out

of the view of young persons.[18] "Erotic goods" were defined in the by-law as "goods appealing to or designed to appeal to erotic or sexual appetites or inclinations". The Ontario Court of Appeal declared that part of the by-law which dealt with the display of erotic magazines to be invalid, since it left the store owners without any guide as to the kind of magazines comprehended by it.[19]

Summary

On the basis of its review of the guidelines and procedures adopted by provincial film classification, review or censorship boards, the Committee found that:

1. **These policies and procedures vary widely across Canada with the result that there is no reasonably uniform national standard.**
2. **Sexually explicit scenes depicting violent assaults have been shown in most parts of the country.**
3. **Movies whose themes include child sexual abuse and exploitation have been approved and shown in most parts of the country.**

In relation to these findings, the first of their kind known to the Committee seeking to compare the guidelines of provincial boards and the application of their review procedures, the Committee recommends that more uniform and specific criteria be developed with respect to the showing of films depicting child sexual abuse and exploitation. The findings are clear and unequivocal that existing guidelines and their application constitute a porous, uneven and inconsistent method of regulating the showing of films of this kind.

Elsewhere in the Report, the Committee recommends that the designation of sexual offences in the *Criminal Code* be more directly based upon the specific types of sexual acts committed against children and youths. In relation to this recommendation, the Committee also recommends that the depiction of these types of sexual acts in which children and youths are portrayed should serve as the basis for the approval-disapproval and/or the classification of films to be shown in theatres.

In light of its recommendations of amendments to the *Criminal Code* given in Chapter 3:

> **The Committee recommends that the provincial Departments of the Attorney General, in conjunction with the federal Department of Justice, develop criteria for film and video classification which conform with the *Criminal Code* prohibitions against visual representations of explicit sexual conduct involving persons under 18 years of age.**

References

Chapter 49: Provincial and Municipal Regulation

[1] *The Censoring of Moving Pictures Act*, R.S.Nfld. 1970, c. 30.

[2] *Constitution Act, 1867*, Section 92 (13). See also Section 92 (8).

[3] *Constitution Act, 1867*, Section 92 (9).

[4] *Constitution Act, 1867*, Section 92 (16).

[5] *Constitution Act, 1867*, Section 92 (15)

[6] See generally Rust-D'Eye, *Municipal Licensing: Enabling Legislation and By-Laws*, [1979-81] Advocates' Quarterly 423.

[7] *Municipal Act*, R.S.O. 1980, c. 302.

[8] *Municipal Act*, R.S.O. 1980, c. 302, s. 222. Emphasis added.

[9] *Municipal Act*, R.S.O. 1980, c. 302, s. 222 (9)(a).

[10] *Municipal Act*, R.S.O. 1980, c. 302, s. 222 (9)(b).

[11] *Municipal Act*, R.S.O. 1980, c. 302, s. 222 (9)(e).

[12] *Municipal Act*, R.S.O. 1980, c. 302, s. 222 (9)(f).

[13] "Body-rub parlours" are separately provided for. See ss. of the *Municipal Act*, R.S.O. 1980, c. 302.

[14] See generally Rust-D'Eye, *supra*, note 6.

[15] *Ibid.*, at 429-32.

[16] *Westendorp v. The Queen* (1983), 2 C.C.C. (3d) 330 (S.C.C.).

[17] *R. v. Sandler*, [1971] 3 O.R. 614 at 620 (H.C.J.).

[18] City of Hamilton By-Law No. 79-144.

[19] *Re Hamilton Independent Variety and Confectionary Stores Inc. v. City of Hamilton*, not yet reported, January 17, 1983 (Ont. C.A.).

Chapter 50

Enforcement Practice

This chapter reviews the enforcement of the various statutory provisions enacted for the purpose of controlling sexually explicit and obscene materials (including child pornography) and the administration and operation of agencies involved in this area of enforcement. The agencies in question are: Revenue Canada Customs and Excise; the R.C.M.P. Customs and Excise Section; and provincial and municipal police forces.

Revenue Canada Customs and Excise Division

Criteria For Seizure

The mandate of the Customs and Excise Division of Revenue Canada includes the administration of the *Customs Act* and the *Customs Tariff*. It is the responsibility of Revenue Canada Customs and Excise to prevent immoral or indecent matter from entering the country. According to Revenue Canada:

> The criteria used for determining the admissibility [of sexually explicit or pornographic materials] . . . are based on the related sections of the *Criminal Code* which deal with "obscene" matters and on court decisions made under the *Criminal Code* and under the *Customs Act*. Since the administration reflects the standards of the community at large, these criteria which are national rather than local, have changed over the years and certain magazines which might have been prohibited in the past as indecent are now admitted.[1]

Since September, 1972, the power to prohibit the entry of goods under the pornography-related provisions of the *Customs Tariff* has been decentralized and has comprised part of the authority delegated to line officers (i.e., Customs inspectors) at each of the nation's more than 270 Customs ports. In order to facilitate uniform standards of administration at all ports of entry, guidelines and instructions have been provided to all local port officers and district offices. The relevant policy document stipulates:

> 9.(2) For the purpose of assisting field officers in making judgments, the following guidelines are to be followed:

The following material will be dealt with at the field level for initial classification and will be prohibited:

(i) Illustrated material containing hard-core pornographic pictures which lewdly and explicitly display the male and female sexual organs, sexual intercourse, sexual perversions and such acts, including bestiality.

(ii) Reading material, including hard-core fictional text dedicated entirely to sexual exploitation and containing no redeeming features. The primary source of material of this character is the paperback, or so-called "pocket" publications.

The following material will be referred to headquarters for initial classification:

(iii) That type of material, the so-called "grey area", with illustrations depicting similar subjects to those described in 9.(2)(i) but in a less explicit fashion, with emphasis, however, mainly on sexual activities and apparently designed to appeal in the same way as hard-core type pornography. In this category are the pseudo or so-called "Nudist" and "Film" magazines which make pretensions to being *bona fide* but which include lewd or other pornographic displays.

(iv) Any publication which despite its format or alleged scientific, medical or artistic purpose appears to be in essence an indecent or immoral publication in disguise.

(v) Any material which might reasonably be considered treasonable or seditious.

(vi) Any publication whose contents appear to counsel, procure or incite a person to possess, cultivate or traffic in narcotics.

(vii) Any publication which appears to advocate, promote or incite hatred against any identifiable group, that is, by colour, race, religion or ethnic origin.

(viii) Any publication concerned with violence which counsels, appears to incite, advises, recommends or persuades persons to commit acts of violence which are prohibited by the *Criminal Code*.

Generally speaking, items which do not fall within the foregoing categories may be allowed to be imported including the so-called "naughty" or "spicy" girlie type magazines where the models are partially clad so that the genitals are not exposed and perversions are not depicted. Cultural and educational publications and *bona fide* nudist magazines, although illustrated with nude males or females, but not including indecent poses or over-emphasis on the sexual organs, are also considered admissible. Non-illustrated fictional reading material (or with inoffensive illustrations) which does not fall in the category of hard-core pornography described in 9.(2)(ii) should be allowed to be imported. It is thus the policy to prohibit only hard-core material of the latter type and this will be done at the field level. In case of doubt the material may be forwarded to headquarters for guidance.[2]

In these guidelines, there is no explicit reference to child pornography as a class of material whose entry into the country should be barred. However, the guidelines are sufficiently broad in scope, and their ambit sufficiently clear, to

make it extremely unlikely that any child pornography detected at a Customs port would be allowed into Canada.

Of greater concern is the number of intangible, imprecise and undefined terms used in the guidelines to describe and differentiate the items which are admissible or inadmissible. These terms and phrases include: "hard-core", "pornographic", "lewdly", "sexual perversions", "sexual exploitation", "redeeming features", "over-emphasis on the sexual organs" and "inoffensive illustrations". Linguistic vagaries of this sort afford wide discretionary powers to the individuals called upon to interpret them. The greater the number of such individuals is, the wider the interpretive latitude evinced by their judgments is likely to be. The wording of the guidelines tends to promote the problems that the document was intended to alleviate: widely disparate standards of enforcement and inconsistency or variation between the decisions made by individual officers.

These problems were found to exist in 1965, according to a paper prepared at the request of Maxwell Cohen, Dean of the Faculty of Law, McGill University. The report concerned *Customs Control of Imported Publications* and was drafted to assist a committee established to investigate the possibility of legislative control of the dissemination of hate propaganda in Canada.[3] The paper concluded that one of the main problems of existing legislative provisions designed to permit Customs to control the importation of certain kinds of literature was "that of exercising the prohibition of a publication uniformly and consistently from port to port across the country". The paper recommended that:

> The decision as to whether certain items of printed or pictorial matter come within the definition [of material whose importation is prohibited] should not be left to Customs officers. The Department's instructions to custom ports of entry on what material is to be prohibited should be predicated upon the advice of competent authority and this advice must be such as to be applicable on a country-wide basis.[4]

The Seizure Process

Under the current system of enforcement, line officers at local ports of entry are responsible for the initial evaluation of imported articles, and for the determination of whether or not their entry into Canada should be permitted. Material sufficiently objectionable to be detained at a port of entry is forwarded to the Regional Office of Customs having administrative authority over the port at which the particular seizure occurred. The 12 regional offices are located in Halifax, Quebec City, Montreal, Ottawa, Toronto, Hamilton, Windsor, London, Winnipeg, Regina, Calgary and Vancouver. At each office, Commodity Specialists make rulings on the admissibility or inadmissibility of seized items. The Commodity Specialists are officials drawn from the ranks of line officers. Their training includes the same 16 week Customs College course received by all prospective line officers, as well as their actual working experience in Customs inspection, part of which involves rotation between jobs at

their assigned port of entry in order to assure their familiarity with all aspects of the port's operation.

In order to become Commodity Specialists, line officers must apply and compete for vacant positions. After this selection process is complete, the new Commodity Specialists receive one week of on-the-job training designed to familiarize them with the paperwork that the job entails and to refresh them concerning the criteria according to which material can be classified as "indecent" or "immoral", for the purposes of the *Customs Tariff*.

Eighteen of the larger ports of entry are classified as district ports. In each of these ports, one officer serves as the Chairman of a District Committee, the responsibility of which is to review the decisions of the Commodity Specialists concerning material falling into the *"grey area"* between the clearly importable and the unquestionably unacceptable. Some of the larger local ports, at which seizures are more frequent, have adopted the practice of referring such borderline material directly to Ottawa for final rulings, thereby bypassing their District Ports. The Chairman's duties include notifying the release point (i.e., local port) of the Committee's decision, corresponding with the importer and referring all questionable items and appeals to Ottawa for final rulings.

Under the *Customs Act*, the importer of matter classified as immoral or indecent may appeal within 90 days of the ruling being made. Upon initial classification, the importer is informed of this statutory right. Appeals are made either in the form of a letter to the Deputy Minister of National Revenue or on standardized forms. However, because prohibitions frequently are made at the field level, appeals are processed through the port at which the seizure occurred. In the event that the appeal is denied, the importer is entitled under the *Customs Act* to appeal further. Such appeals must be initiated within 60 days of the Deputy Minister's decision, and are dealt with by a judge of the Supreme Court in Prince Edward Island, by a judge of the Court of Queen's Bench in New Brunswick, Saskatchewan and Alberta, by a judge of the Superior Court in Quebec, and by a judge of the County or District Court in all other provinces.

All questionable items detained are referred to a special office at Revenue Canada Customs and Excise Headquarters in Ottawa. This office, the Prohibited Importations Section, also reviews all appeals and recommends decisions to the Deputy Minister. In addition, the Section is responsible for notifying the field ports of the decisions made regarding the *"grey area"* materials referred to it; the ports in question must then inform the would-be importers about the Section's decision. Every second week, the Section distributes to the field a list reporting its rulings made during that period.

In the Committee's judgment, the listing of rulings has the potential to serve a valuable function in Revenue Canada's efforts to control the importation of adult materials. Line Officers, Commodity Specialists and District Committees could draw upon the report for guidance in their deliberations concerning the importability of borderline material. If it were treated as a set

of directives from "head office", the listing could facilitate virtually uniform nation-wide standards for seizure.

Through extensive interviews with the responsible local Customs officials, the Committee learned that the bi-weekly listing is not widely accessible. The items that have been the subjects of the Prohibited Importations Section's rulings are not listed alphabetically according to title. Considering that the Prohibited Importations Section receives about 1000 items each month to be ruled upon, it can be appreciated how difficult it may be to locate a particular title on the twice-monthly issued listing. At the Vancouver Regional Office, the initiative has been taken to alphabetize the entries on the list. The Committee was informed of numerous examples across the country in which regional decisions were inconsistent not only with those made in Ottawa, but also with those made in the same office; in some instances, an official has been inconsistent with his or her own prior rulings concerning the same magazine title.

The Prohibited Importations Section has developed a policy of co-operation with periodical distributors and publishers. The distributor, or a lawyer representing the publisher, of a questionable imported publication will submit a "blueline" (also referred to as a "chromoline" or "dummy") copy of a forthcoming issue to the Prohibited Importations Section, and will be advised whether any depictions contained therein are sufficiently offensive to prevent the magazine from being allowed into Canada. After the necessary excisions have been made, the issue is re-submitted for a ruling, and generally, receives approval.

Another Customs official whose function may have an impact upon the seizure process is the Regional Intelligence Officer (R.I.O.). R.I.O.s are stationed either centrally (i.e., in Ottawa) or regionally, depending upon their geographic area of jurisdiction. The R.I.O.'s basic duty is to gather information concerning Customs-related incidents occurring in his/her assigned region. The R.I.O. also acts as a liaison with other agencies, contacting such organizations when their involvement is warranted by the facts of a case under investigation. If the case appears to be purely Customs-related, the R.I.O. may decide to conduct a more exhaustive follow-up investigation. If grounds for laying charges are uncovered, the standard practice is for the R.I.O. to notify personnel from R.C.M.P. Customs and Excise, so that they can make the necessary arrests.

Liaison with Canada Post

The interrelationship of Revenue Canada Customs and Excise and the Canada Post Corporation is of critical importance to the process by which the importation of pornography is regulated. Customs officials are stationed in all post office facilities handling mail of foreign origin. The initial screening of mail occurs at each of five International Mail Units (I.M.U.s) across the country. The I.M.U.s located in Halifax, Montreal, Toronto, Winnipeg and Vancouver are the central points from which mail first enters Canada. After the

preliminary screening, the mail is sent to one of 12 secondary screening facilities across the country.

Under the *Canada Post Corporation Act*,[5] a legal distinction exists between letters and other forms of mail. In practice, the term "letter" seems to be synonymous with mail sent by first class post. As a result of this differentiation, second, third and fourth class mail appears to be far more readily accessible for purposes of Customs inspection than is first class post. For this reason, incoming foreign first class mail received by the I.M.U. is separated from the second, third and fourth class post, the latter classes being subject to automatic inspection to determine which items are dutiable.

In order to obtain an illustration of the volume of mail inspected, the Committee contacted the responsible officials at the I.M.U. in Toronto. That unit handled approximately 9,500,000 pieces of incoming foreign mail in 1982, or about 40,000 pieces daily. There were 24 staff members employed to examine all posted matter. The average inspector handled almost 1700 pieces of mail daily, or well over 200 pieces hourly. Any time spent opening or examining letters or packages which may require individual scrutiny reduces the time allotted for the inspection of the remaining load of mail.

No information is available concerning the thoroughness of these inspections. However, when the sheer volume of mail that the system processes is considered, it is difficult to imagine the Customs officials having sufficient time to give most items more than a cursory going-over (with the result that more carefully concealed pornographic materials may escape detection and examination).

When the Customs officer inspecting incoming mail finds an item that he or she considers classifiable as indecent or immoral, he or she forwards the item to the Regional Customs Office for examination and ruling by a Commodity Specialist. If the contents of the envelope or parcel in question are then ruled prohibited, the importer has the same rights of appeal as a person from whom material is seized at a border crossing; that is, an appeal may be submitted through the regional or port Collector of Customs to the Deputy Minister. Material ruled by the Commodity Specialist not to be immoral or indecent is released and delivered to the importer. Items about which the Commodity Specialist has difficulty making a decision are forwarded to Ottawa for a ruling by the Prohibited Importations Section.

At the International Mail Unit in Winnipeg, the Committee learned that measures had been taken to increase the effectiveness of Customs officers in spotting items that should be seized. The Commodity Specialist assigned to the Winnipeg Regional Customs Office had posted notices in the I.M.U.'s sorting area designed to alert the Customs personnel concerning the kinds of packages for which they should be on the lookout. The notices described the methods used by importers of unlawfully imported adult material to prevent it from being detected in the mail. It appears to be the practice at the Winnipeg I.M.U. to rotate Customs employees to other assignments less frequently than

at other I.M.U.s. As a result, Customs officers inspecting mail in Winnipeg may be more experienced and more knowledgeable concerning the importation of pornography than comparable officials stationed elsewhere. The disproportionately high volume of detected material mailed to Manitoba addresses between 1979 and 1981 detained by Customs attests to the efficacy of the methods employed at the Winnipeg I.M.U. (see Chapter 51).

The special attention afforded to certain types of mail may impede the detection and seizure of immoral or indecent matter. The official Post Office/Customs position, as of March, 1982, was as follows:

> 2. It is not expected that Canada Post employees will have to make any determination that any specific goods are dutiable or controlled. There are, however, types of mail matter that can be delivered automatically without reference to Canada Customs; for example, correspondence, letters, postcards, newspapers and magazines posted to individuals by publishers need not be referred. Regional Collectors of Customs are encouraged to give their counterparts in Canada Post any further guidance or information on the types of mail that can be forwarded directly so as to ensure the best possible service.
>
> 8. . . . First class or letter mail will be subject to a "cull" by Canada Post employees to provide for automatic release of such material as envisaged in section 2. As well, "AO" (Autres Objets) will be culled to remove for direct delivery, the newspapers, circulars and magazines which need not be examined by Customs.
>
> 9. Notwithstanding the foregoing, Canada Customs may from time to time arrange for sampling checks of the letter mail for AO material culled out for direct delivery. The purpose of these checks is to do a sampling of such mail for illicit importations of narcotics or other material concealed therein.[6]

Considering the implications of these instructions, it is evident that the use of certain importation practices designed to hide the nature of the material being posted could result in substantial quantities of immoral or indecent depictions passing through the mail. For instance, legitimate magazines or newspapers can be used to conceal copies of pornographic publications. Individual photographs and small format (5" x 7") magazines may be readily concealed in letter-sized or slightly over-sized envelopes. Sending such envelopes by first class mail renders extremely remote the chance of their detection and seizure.

Storage of Information

A factor that may have a significant impact on the investigation of cases involving child pornography and other indecent, immoral or obscene matter is the effectiveness of the system by which records of Customs seizures are kept and are made available to appropriate law enforcement agencies. For instance, learning that a person from whom pornography has just been seized at a border crossing has had similar matter detained by Customs on a number of previous

occasions may strongly influence an enforcement agency in deciding whether to conduct a comprehensive investigation of that individual (e.g., in deciding whether to apply for a warrant to search the person's place of residence). The efficient maintenance of records of Customs Seizures could prove invaluable in relation to the identification of habitual smugglers of pornography, and more importantly, the major consumers of child pornography.

All district Customs offices are encouraged to contribute information concerning seizures of pornographic materials to Ottawa for computerized storage at Revenue Canada Customs and Excise Headquarters. The Committee was informed that 13 offices had supplied such information; however, in examining Revenue Canada files for the period 1979-1981, it was discovered that only three offices had contributed information. In order to obtain a more accurate picture of the number and nature of pornography seizures, the Committee visited the Regional Offices. Here, a hand search was conducted of Customs records. While about 10,000 entries were obtained from the computerized file in Ottawa, approximately an additional 16,000 entries came to light as a result of these visits.

Aside from the sheer incompleteness of the information contained in the central computerized file, the quality of information obtainable from this source often lacked pertinent details. For some of the 16,000 entries, few details were recorded that would be vital for the purposes of police investigation; specifically, the printouts from the file frequently failed to indicate either what material was seized (by title or description) or the number of items detained in each seizure. A number of duplicated entries were found. The failure of numerous offices to contribute information to the file could seriously hamper police investigations. Enforcement agencies checking with Ottawa, for instance, may be informed that a suspect has never had material seized from him when, in fact, any number of seizures from that person have been made by an office that does not contribute information to Headquarters.

R.C.M.P. Customs and Excise Section

Jurisdiction

Members of the Royal Canadian Mounted Police may be appointed as peace officers under the *R.C.M.P. Act*,[7] and when so appointed, are peace officers in every part of Canada. As such, they may be called upon to enforce not only the provisions of the *Criminal Code* throughout the country, but also a wide range of other federal statutes. In accordance with federal-provincial contracts, provincial police service is extended by the R.C.M.P. to the Yukon and Northwest Territories, and to all provinces not maintaining their own provincial police forces (in effect, to all provinces except Ontario and Quebec; the Newfoundland Constabulary, in practice, restricts its policing activities to certain regions of the province). The R.C.M.P. provides contracted municipal police service to about 200 municipalities in all provinces, except Ontario and

Quebec. When acting in the capacity of provincial and federal police, the R.C.M.P. enforces the entire gamut of Canadian legislation, from the *Criminal Code* and other federal statutes to provincial acts and municipal by-laws.

Broad federal enforcement goals, policies and priorities for the R.C.M.P. are set by the agency itself, in consultation with the Solicitor General of Canada. With respect to R.C.M.P. work at the provincial and municipal levels, goals, policies and priorities are determined in co-operation with the Attorney General or Solicitor General of the particular province.

Under Canadian constitutional law, enforcement of the *Criminal Code* is delegated to the provincial Attorneys General. Thus, while it is the peace officer who institutes criminal proceedings by laying an information before a justice of the peace, the Attorney General of the particular province or territory has the power to halt any such proceedings by withdrawing the information, or by issuing a stay of prosecution pursuant to section 508 of the *Code*. Whether any such action is taken, or whether the prosecution is permitted to go to trial, may depend upon the prosecution policy of the Attorney General, and more specifically, upon the amount of emphasis that the Attorney General has determined should be placed upon enforcing certain sections of the *Criminal Code*. It is as a result of this constitutional division of authority, this discretionary power and this policy determination, that the efficacy of the *Criminal Code* provisions relating to obscenity can be minimized or even negated in different parts of the country. A similar situation pertains with respect to the charging practice of the R.C.M.P. when its members are involved in provincial and municipal policing since, as noted, the agency's goals and policies under such circumstances are set in consultation with the Attorney General. It has thus been pointed out to the Committee that:

> "Priorities may change frequently, depending on operational necessity, direction of the A.G., etc., and may vary from Unit to Unit, City to City or Province to Province."[1]

Enforcement

The Section of the R.C.M.P. to be discussed first concerns itself exclusively with Customs and Excise matters. As a matter of practice, responsibility is divided between: R.C.M.P. Customs and Excise; and Revenue Canada Customs and Excise. Revenue Canada acts primarily to prevent smuggled goods from entering the country, and to this end, maintains offices at border crossings and at all International Airports, that is, at all airports at which flights arrive from outside of Canada; in turn, the R.C.M.P. undertakes to investigate and seize smuggled goods that may penetrate the Customs barrier and find their way inland.

Canada, for purposes of law enforcement by the R.C.M.P. is divided into 13 separate districts, or Divisions, each with its own Divisional Headquarters

(i.e., one Headquarters for each province or territory, and a National Headquarters in Ottawa).

According to the *R.C.M.P. Act*,

> (4) Every officer, and every member appointed by the Commissioner to be a peace officer, has, with respect to the revenue laws of Canada all the rights, privileges and immunities of a customs and excise officer, including authority to make seizures of goods for infraction of revenue laws and to lay informations in proceedings brought for the recovery of penalties therefore.[9]

Acting under the authority of the *Customs Act* (section 205), the R.C.M.P. Customs and Excise Section seizes smuggled goods found inland. As a rule, material so seized is forfeited directly to the Crown, except in cases where the person charged with smuggling is able to show "lawful excuse" — that is, to prove that the material was not brought into the country illegally.

Smuggled pornography, however, often constitutes an exception to this rule. In order for the goods to be forfeited, they must have been imported unlawfully. In the case of pornographic matters, importation would be illegal only if the items brought into the country were immoral or indecent, and classifying goods as immoral or indecent is the responsibility of Revenue Canada Customs and Excise. It is necessary for a ruling to be made by the latter agency respecting any pornographic matter whose forfeiture is sought under the *Customs Act*, even if the agency responsible for the initial seizure was the R.C.M.P.

Where the *Customs Act* is invoked, the R.C.M.P. prepares a "K 19, G.R.C." Seizure Form, upon which is recorded a description of the goods being held, along with any additional relevant information. Copies of the completed form are sent to Revenue Canada's Prohibited Importations Section, to R.C.M.P. National Headquarters to be placed on a national file, and, if required, to Division Headquarters. If the Prohibited Importations Section rules that the pornographic material in question falls within the meaning of the words "immoral or indecent", then the material becomes the property of the Crown (subject to an appeal to the Deputy Minister and thereafter to the courts). Alternately, if the material is ruled not to have been imported illegally, and no criminal (i.e., obscenity) charges are laid with respect to it, then it is returned to the owner or claimant.

It is also the case that charges are laid by the R.C.M.P. under the *Criminal Code* with respect to pornography initially seized under the *Customs Act*.[10] In non-contract Divisions, where the R.C.M.P. only provides federal policing, it is the agency's policy to refer cases involving substantial amounts of pornographic material to the police force with local jurisdiction for its decision whether or not to prosecute under the *Criminal Code*.[11] Should the force choose not to charge, the matter may be dealt with by the R.C.M.P. either by means of the *Criminal Code* or the *Customs Act*. In other jurisdictions, even

where forfeiture under the *Customs Act* fails because the Prohibited Importations Section rules that the material in question is not immoral or indecent, the case at hand does not necessarily terminate. Depending upon the circumstances involved (e.g., offering for sale, distribution, etc.), the R.C.M.P. may refer the case to the Attorney General of the province in which the pornographic matter was seized. In turn, the Attorney General may consider the material sufficiently objectionable to proceed under the *Criminal Code* provisions relating to obscenity.

R.C.M.P. National Headquarters, as a matter of policy, regards unlawfully imported pornography — especially child pornography — as a serious problem. As a result, Headquarters has established a separate catalogue listing all seizures of pornographic material; moreover, the R.C.M.P. has acted in co-operation with Revenue Canada in order to obtain access to Customs and Excise detention orders issued against pornographic matter. Information concerning these Customs seizures has been fed into R.C.M.P. computers. Thus, the R.C.M.P. constitutes perhaps the most comprehensive source of information in Canada with regard to the detention and forfeiture of smuggled child and adult pornography.

The R.C.M.P. derives considerable strength from co-operation with other law enforcement agencies, including local, municipal and provincial police forces as well as police forces in other countries. Co-ordination between the actions taken by the R.C.M.P. and those of other police forces inside Canada tends to maximize the efficacy of efforts to control the availability of unlawfully imported pornography. Information concerning individual seizures brought to the R.C.M.P.'s attention by local or provincial police generally results in the check of the suspected importer's, seller's or distributor's name against the R.C.M.P.'s computerized records. If the suspect's name appears one or more times in the records in connection with previous unlawful activities related to sexually explicit materials, either the R.C.M.P. or the local agency may consider that sufficient grounds have been established to conduct a more extensive investigation, including applying for a warrant to search the suspect's place of residence.

Co-operation of this kind aids in the development of optimally effective charging practices. When municipal or provincial police locate pornographic material smuggled into Canada, several courses of action are available to them. If they believe that the matter meets the legal test of obscenity, they may seize it or may lay charges under the *Criminal Code*. Where the local or provincial police feel that impugned material is insufficiently salacious to warrant an obscenity charge, they may contact a member of the R.C.M.P. who, in turn, may seize the material and charge under the *Customs Act* which, as a federal statute, is beyond the jurisdiction of the former agencies.

Where the material has been smuggled and distributed, sold or displayed, the local police and R.C.M.P. may charge simultaneously under the *Criminal Code* and the *Customs Act*. Typically, when this happens, the courts will deal first with the offences alleged under the *Code*. If the accused is convicted, any

charge(s) under the *Customs Act* will be withdrawn, but if the verdict is one of acquittal, it still is possible that the legal sanctions provided for under the *Customs Act* may be applied (e.g., where distribution, sale or public exposure have not adequately been proven, or where the material seized does not meet the legal test of obscenity, but is demonstrably immoral or indecent). Co-operation and information-sharing between local or provincial police and the R.C.M.P. may make it possible to determine, on the basis of all available evidence, which of these alternate courses of action is most appropriate in the circumstances.

International Liaison

Co-operation between the R.C.M.P. and law enforcement agencies in other countries has proved rewarding as a means of strengthening the control exercised over the importation into Canada of obscene and immoral or indecent material. This co-operation manifests itself in the form of inter-agency information sharing, and is useful where foreign police departments seize the mailing lists of pornography producers and provide the R.C.M.P. with the names and addresses of Canadian subscribers appearing thereon.

In 1978 and early 1979, the United States Federal Bureau of Investigation (F.B.I.) conducted investigations of Falcon and All-American Studios, two San Francisco-based firms identified as leading producers and distributors of homosexual child pornography. The seized mailing list of All-American Studios contained over 5000 names and addresses, from about 30 countries, including Canada. The R.C.M.P. assisted the F.B.I. in its investigations by conducting a number of searches across Canada of the residences of listed customers. The Canadian subscribers on the list numbered 266; the geographic distribution of addresses was:[12]

Newfoundland	0	Manitoba	8
Prince Edward Island	1	Saskatchewan	11
Nova Scotia	5	Alberta	27
New Brunswick	4	British Columbia	32
Quebec	67	Yukon	0
Ontario	111	Northwest Territories	0

The Canadian addresses on the seized mailing list indicate that recipients of magazines from All-American Studios resided not only in major metropolitan areas, but also in smaller cities and towns, and even in numerous rural communities.

The R.C.M.P.'s legal authority to conduct searches in the All-American investigation derived from the fact that the products would be classified as immoral or indecent, and hence could be treated as smuggled goods. The investigations thus fell within the R.C.M.P.'s mandate of enforcing the *Customs Tariff* and the *Customs Act*. About 40 searches were executed across the Country by R.C.M.P. Customs and Excise officers in order to determine the

quantity of unlawfully imported material received by customers identified by the mailing list. Almost without exception, child pornography was found, sometimes in large quantities. The pornography either had originated in Europe, or came from the companies in San Francisco. Most of the subscribers had been unknown to Canadian authorities prior to the R.C.M.P.'s receipt of the Canadian mailing list from the F.B.I.

The following case study illustrates the value of co-operation between the R.C.M.P. and foreign enforcement services in discovering the identities of Canadian purchasers of child pornography.

> The accused, a 34 year-old Edmonton grade four teacher, was investigated by R.C.M.P. Customs and Excise officers after they received notification from United States authorities that the accused was receiving child pornography by mail at his Edmonton address. The material was sent to the accused under an assumed name.
>
> An R.C.M.P. search of the accused's residence uncovered more than 50 pieces of commercially produced child pornography valued at about $1000. The accused was charged under the *Customs Tariff*. The investigating officers also found photographs of young girls apparently between 10 and 12 years of age, wearing school gym outfits. Three photographs were located that depicted a young girl in a nightgown; of these, one shot showed the girl reclining on a bed with one leg raised, and was focussed on the subject's genital area.
>
> Further investigation conducted by Edmonton City Police raised suspicions that the accused had sexually assaulted three female children, of whom one was four years-old.
>
> Before City Police could interview him, the accused committed suicide.

On the basis of the information assembled by the Committee, it appears that the use of customer mailing lists represents a more efficient method of discovering persons who illegally import pornography than the hit-and-miss process of border point Customs inspection and examination of mail. The latter two techniques require line officers to spot a relatively tiny amount of baggage or mail containing illegal importations amidst a huge volume of luggage, letters and parcels that conceal no illicit matter. Seized mailing lists instantly identify the persons whose use of the postal system may warrant official scrutiny. It appears that the existing practice is to conduct searches in a minority of cases where there is suspicion that pornography is being imported illegally. In the All-American investigation, for instance, one that involved the identification of a substantial volume of child pornography, only about 40 R.C.M.P. searches were conducted, representing approximately 15.0 per cent of the Canadian entries on the seized mailing list.

The Committee recognizes that care and discretion must be exercised by law enforcement officers before they undertake to search a private citizen's home or place of business. Certain fundamental safeguards have been enacted to prevent any abuse of police authority in conducting searches. A police officer investigating a suspected *Criminal Code* offence cannot obtain a warrant to search a certain building, receptacle or place unless he or she complies with

section 443(1) of the *Code* by satisfying a justice that there is a reasonable ground to believe that the place in question contains:

- Anything upon or in respect of which an offence against the *Code* has been or is suspected to have been committed,
- Anything that there is reasonable ground to believe will afford evidence with respect to an offence against the *Code*, or
- Anything that there is reasonable ground to believe is intended to be used for the purpose of committing any offence against the person for which a person may be arrested without warrant.

Also, section 8 of The *Canadian Charter of Rights and Freedoms* provides that "Everyone has the right to be secure against unreasonable search and seizure".

In the Committee's judgment, and considering the results of the searches conducted in the All-American investigation, it would seem that an aggressive search and seizure policy is warranted, wherever circumstances render such techniques an effective means of strengthening legitimate enforcement practices. Where foreign police provide the R.C.M.P. with subscriber mailing lists, and especially where child pornography is involved, the circumstances do exist to justify thorough investigations, including searches. In this regard, the R.C.M.P. could make it known publicly that it was actively seeking the co-operation of foreign enforcement agencies in obtaining mailing lists, and that it intended to conduct a rigorous investigation of any suspected case of unlawful postal importation of child pornography discovered through such contacts. The prospect of being discovered, of having one's residence searched, and of facing the real possibility of prosecution and conviction, would likely serve to dissuade a significant number of persons from sending for child pornography through the mail.

Canadian authorities should also actively seek out the mailing lists of all major commercial producers and distributors of child pornography. It is significant that Canadian authorities appear never to have received customer lists from the significant national sources of child pornography; it is unclear whether this fact is attributable to a lack of enforcement or an unco-operative attitude on the part of authorities in other nations, or to a failure by Canadian enforcers to take an active role in requesting that foreign police agencies supply them with seized customer lists.

Provincially and Municipally Contracted Services

As already noted, the R.C.M.P. is charged with enforcement of the *Criminal Code*, and in many communities may be the chief agency providing such enforcement service. Thus, the R.C.M.P.'s mandate includes laying charges under those sections of the *Criminal Code* that concern obscenity. Where obscene matter is domestically produced or is mailed, kept for purposes of distribution or circulation or is sold, exposed to public view or possessed for any such purpose, the R.C.M.P. may charge under the *Code*.

In contract jurisdictions, the R.C.M.P. provides municipal or provincial police service, or both. In these jurisdictions, R.C.M.P. officers are called upon to enforce provincial statutes and even municipal by-laws. In the six contract provinces in which film classification or regulatory boards have been established pursuant to provincial legislation, the R.C.M.P. are the enforcement agency laying charges for such violations as exhibiting a film without first submitting it to the board for approval or failing to display a film's rating outside a theatre in the manner prescribed by statute or by the board.

In its contracted role as a municipal police force, the R.C.M.P.'s mandate includes charging for infractions against by-laws designed to restrict the accessibility of sexually explicit materials to children. The only by-laws of this kind of which the Committee has learned, are those passed by municipalities where the R.C.M.P. does not provide contracted service. The R.C.M.P., however, would have authorization to enforce the Victoria, British Columbia by-law that prohibits the sale or lease of certain pornographic video cassettes, videotapes or films.

Other Law Enforcement Agencies

Jurisdiction

The role of local, municipal and provincial police, referred to here as local police forces, in the control of pornography is reviewed briefly, since a number of salient aspects of this role have been alluded to already. These local police forces operate under the authority of the provincial Attorneys General. Their jurisdiction permits them to enforce the *Criminal Code*, provincial statutes and municipal by-laws (in the case of municipal police, only the by-laws of their own municipality), but not federal legislation such as the *Customs Tariff* or the *Customs Act*. Thus, the primary instruments available to local police forces for dealing with sexually explicit materials are the *Criminal Code* provisions relating to obscenity.

Using only the *Criminal Code* restricts the range and number of situations in which local police forces are able to act against pornography in magazine and print form. First, the material with respect to which these agencies are able to lay charges must meet the legal standard of obscenity; it is insufficient for the depictions in question merely to be immoral or indecent. Second, importation of pornographic matter in contravention of the *Customs Tariff* and the *Customs Act* does not in itself warrant the direct intervention of local police forces. Even if obscene matter has been smuggled successfully into Canada for private consumption rather than for publication, distribution, circulation, sale or public exposure, charging or seizure under the *Code* are inappropriate courses of action. In such circumstances, the only option open to local law enforcers is to refer the case to the R.C.M.P. or Revenue Canada Customs and Excise for disposition under section 205 of the *Customs Act*. Similarly, if illegally imported matter is discovered that is only considered to be immoral or

indecent, local law enforcement agencies may contact the R.C.M.P. or Revenue Canada. The effectiveness of local police in controlling much of the pornography that enters Canada is largely contingent upon the nature of the cooperative liaison developed with the R.C.M.P.

Provincial Policies and Guidelines

Another factor impinging upon the role of local police forces in controlling pornography is the nature of the provincial law enforcement policy determined by the Attorneys General. Contacts made between the Committee and police departments in most of Canada's major cities revealed that these policies of enforcement varied widely from province to province. In two provinces, British Columbia and Quebec, the Attorneys General have issued guidelines setting forth the types of depictions and other materials with respect to which obscenity prosecutions or seizure procedures may be instituted. In Alberta, informal guidelines are followed. Police officers and agencies are expected to comply with these provincial guidelines since the Attorney Generals have the authority to stay any proceedings under the *Criminal Code* of which they disapprove. The guidelines are:

British Columbia Guidelines for Enforcement of the Obscenity Provisions, Criminal Code of Canada (1978)

Prosecutions for material classified as "obscene" under the *Criminal Code* of Canada are subject to the following guidelines:

A. The following categories of obscenity are considered to clearly contravene community standards and may be the subject of prosecutions:

   1. Material which depicts sexual acts coupled with acts of violence (including sadism, masochism and other similar acts).

   2. Material which depicts acts of bestiality.

   3. Material which depicts juveniles involved in sexual activities. *Violence is not a factor to be considered in this context.*

B. With respect to material recognized as "hardcore" and not covered by the criteria set out above, the following guidelines are applicable:

   1. Material in this category shall not be sold or displayed to juveniles.

   2. Material in this category may be sold in establishments designed for the purpose. Such establishments *shall* prevent the display of this material to public view from outside the establishment.

   3. Juveniles shall not be permitted access to these establishments.

   Should the guidelines in this category be breached, prosecutions may be taken.

C. With respect to material recognized as "softcore", being the sort of material generally sold in news and magazine stands, corner grocery stores, and drug stores, the following guidelines are applicable:

   1. Such material shall not be accessible to juveniles.

2. The giving of advice to police as to whether or not such material is "obscene" is the responsibility of Crown Counsel.

3. In the case of material recognized as "softcore", where Crown Counsel forms the opinion that the material is legally obscene, "*in rem*" proceedings pursuant to section 160 C.C. is the preferred course of action. However, where continued violations of these guidelines occur, Crown Counsel are to proceed with prosecutions under section 159 C.C.

For the purposes of these guidelines, "juvenile" means any person under the age of 17 years.

The issue of obscene material is of concern to both retailers and distributors. The co-operation of these businessmen has been sought to ensure that in premises to which juveniles have access, such material is sold from behind the counter or is not accessible to them.

It is expected that retail sellers of "softcore" material will attempt to comply with the spirit of the Guidelines by ensuring non-availability of "softcore" material to juveniles. However, it must be recognized that prosecutions cannot proceed unless the material is deemed legally obscene. The responsibility of ensuring that no legally obscene material is on the shelves rests with the retailer and distributor.

The police must not exercise their powers under Category "C" for the purpose of prohibiting the sale of "girlie" or adult magazines in this category without first determining the legal question of obscenity.

Quebec Guidelines Concerning Pornographic Newspapers and Magazines (1977)

We will divide these categories of magazines and newspapers into three sections to better determine in which cases we should proceed with legal action:

A. The categories of obscenities mentioned hereafter are considered as an evident violation of traditional values and morals of society that can take the following form.

   1. All publications that contain pictures of sexual acts accompanied with violence (including sadism, masochism and other acts of the same nature).

   2. All publications that contain pictures of bestiality.

   3. All publications that contain pictures of sexual acts involving children.

B. Hardcore publications not mentioned above:

   1. These publications cannot be sold to minors nor can they be accessible to them.

   2. These magazines in certain establishments must be wrapped in a fashion that prohibits examination. These business establishments must ensure that the racks containing this material are not in the public view in the store.

C. Publications known as "softcore" [that is pornographic but acceptable by a good portion of the population]. These publications must not be sold nor can be accessible to children less than 14 years of age.

Protection of the minors is our main concern.

We are counting on the collaboration of all businesses, in order to achieve the goals we afix.

You are asked to note that we must prohibit completely the access of minors to specialty shops known as "Sex Shops".

The official provincial guidelines for Quebec and British Columbia set restrictive limits on the classes of material considered sufficiently offensive to warrant the intervention of the criminal process. Under the guidelines, a few general types of magazines are specified as suitable subjects for prosecution, including those depicting acts of bestiality, and those that present children and juveniles involved in sexual activities. Since the latter classes of material are generally not commercially available within Canada, the number of proceedings against sexually explicit material undertaken by local law enforcers could be expected to be small in jurisdictions where such guidelines have been implemented.

The enforcement experience in this regard varies widely, indicating that the setting of provincial guidelines is not by itself synonymous with their actually being implemented. Between 1979 and 1982, 109 charges were laid under sections 159 to 164 of the *Criminal Code* by the Montreal Police Force and 17 cases came before the Court of Sessions.[13] In contrast, it was reported to the Committee that only one obscenity prosecution had been commenced in Vancouver during the four and a half year period ending in April, 1982 during which that province's guidelines had been in effect. The enforcement record of the latter city stands in stark contrast to that of Montreal (109 charges between 1979 and 1982) and that of Metropolitan Toronto, where 101 obscenity charges were lodged under section 159(1) of the *Code* between January 1 and November 30, 1982.[14] There are no provincial guidelines in Ontario.[15]

The evidence suggests that the issuing or non-issuing of provincial guidelines may have little bearing upon actual enforcement practices. Rather, the evidence indicates that it is provincial policy that plays a decisive role in determining whether the obscenity provisions of the *Criminal Code* are relatively tightly enforced or whether, comparatively, a *laissez-faire* stance prevails with respect to the distribution, sale and display of sexually explicit matter.[16]

Provincial policy may impinge upon the enforcement of the obscenity laws, as for instance, in jurisdictions where police officers are required to consult either with a Crown Attorney or with an agent of the Attorney General before acting against any allegedly obscene matter. In these jurisdictions, the decision whether to initiate proceedings is taken out of the hands of the police.

In the Committee's view, the policies of the provincial Attorneys General with respect to obscenity prosecutions may impinge upon the practices of other agencies involved in regulating pornography. In some instances, this impact results in *de facto* compliance with an Attorney General's policy, even when the agencies in question have federal jurisdiction. In several provinces, Customs

officials contacted by the Committee reported having encountered problems as a result of the Attorney General's position. In addition, R.C.M.P.-initiated obscenity prosecutions, both in contract and non-contract provinces, may be stayed by order of the Attorney General.

Enforcement Practices

In certain provinces, the police are directed not to take action unless they receive complaints from the public concerning pornographic matter being offered for sale. This practice makes enforcement a hit-and-miss affair that depends on chance — that is, on certain sexually explicit materials being seen by a person vocal enough, aware enough, or with moral sensibilities, to lodge a complaint. Where this practice has been adopted, it assures that inconsistencies in enforcement result, reflecting the inconsistencies between complaints lodged in different provinces, or even in different municipalities within a province. In one province, a policy has evolved of focussing law enforcement attention primarily on complaints received in writing; in the province in question, it is expected that complainants will be prepared to testify in any legal proceedings concerning the pornographic matter about which the complaint was made.

In another province, the Attorney General has issued instructions preventing the police from intervening before a publication has gone into public distribution. The principle underlying this policy is that government should not act as a censor of printed matter. A policy of this kind is calculated to induce periodical distributors to exercise caution in deciding which magazine titles to carry; since the provincial government and police do not provide guidance concerning what material is acceptable and what is not, the distributors may adopt relatively conservative practices in order to avoid the risk of unexpected prosecutions and seizures.

The control of pornography by local law enforcers is also affected by the departmental policies of individual police forces. Police manpower resources, the local occurrence of other, higher priority offences (e.g., violent crime) and the perceived extent of community concern with pornography influence whether the obscenity provisions of the *Criminal Code* are enforced with rigour or laxity. Departmental adoption of standardized procedures may affect the role of the local police in regulating the display and accessibility of sexually explicit publications. In several urban jurisdictions, for instance, police forces have adopted a so-called "walk-around" procedure, that involves having officers informally inspect the magazine racks of convenience stores, newsstands and other retailers. If pornographic magazines are prominently displayed, or are placed within the reach or field of view of children, the officer advises the proprietor to alter the display.

The "walk-around" policy poses problems related to the ambit of section 159(2) of the *Code*. Under this subsection, public display and sale of sexually explicit matter are proscribed only where the material in question meets the legal test of obscenity. Where obscene material is being sold, the police practice

of cautioning a proprietor may serve as an effective means, should a prosecution ensue, by which to deprive him or her of the defense that he or she was unaware of the nature or contents of the material being sold.

It is unquestionably the case, however, that much printed matter that does not meet the test of obscenity is unsuitable for open display in places where it is accessible to children and youths. Therefore, while police officers may advise or even warn retailers to display so-called "soft-core" pornography discreetly, they have no legal means by which to enforce standards of accessibility. In practical terms, the "walk-around" procedure amounts to a policy of informal cautioning that takes advantage of the retailer's presumed unfamiliarity with the law. In most instances, this policy fulfills its purpose; an (unenforceable) warning from a uniformed police officer often suffices to persuade store owners to reorganize their magazine racks. The possibility remains, however, that retailers may ignore the warnings, in which case, the police have no legal recourse. Alternately, the store owner may regard the warning as a threat or intimidation, and may challenge the authority of the police so to conduct themselves. The prospect of such a challenge has been a matter of sufficient concern in one province to cause the Attorney General's regional agent to instruct police departments not to advise retailers concerning the display of pornography.

Another factor potentially affecting local enforcement of the obscenity-related sections of the *Criminal Code* is the existence or non-existence within particular police forces of specialized squads dealing exclusively with sexual offences, or only with pornography (the only example of the latter being Project "P" jointly operated by the Metropolitan Toronto Police Force and the Ontario Provincial Police). Members of such squads gain specialized experience and expertise in their area of enforcement, and possess a greater awareness than non-specialized officers, of the law of obscenity, of methods of distribution, sale and display, of appropriate investigative techniques, and of the sort of material whose seizures is most likely to be upheld by the courts.

In eight provinces, local police forces are also responsible for enforcement of the provincial statutes enacted to regulate the exhibition of motion pictures. The local police are empowered to lay charges where provisions of these Acts are contravened, or where exhibitors or distributors fail to comply with certain decisions of the film classification or censor boards.

Finally, reference must be made to the role of local police in enforcing municipal by-laws designed to regulate the conditions under which retailers purvey sexually explicit materials to the public. In municipalities where such legislation has been passed, the police are empowered to play a direct role in enforcing certain standards for the accessibility to children and the display of pornographic merchandise. (The legal ramifications and problems associated with the accessibility by-laws are discussed in Chapter 49).

Summary

In its review of Canadian enforcement practices of various statutory provisions enacted for the purpose of controlling sexually explicit and obscene materials (including child pornography), the Committee identified the following problems.

In relation to the operation of mandate assigned to the Customs and Excise Division of Revenue Canada, concerning the importation of pornography, it was found that:

1. Imprecise and undefined terms are used in guidelines to describe and differentiate items that are admissible or inadmissible.

2. The need for Commodity Specialists to receive more specific training to acquaint them with leading judicial decisions, with the distinctions in law between indecency or immorality and obscenity, and with the methods and problems of various enforcement agencies.

3. The decentralization of the authority to prohibit the entry of goods coupled with the issuance to line officers of imprecise, non-specific guidelines affords them wide discretionary powers, and places heavy reliance on their subjective judgment.

4. The inaccessibility to Customs officers of the list of prohibited publications issued by the Prohibited Importations Section.

5. The failure of the Prohibited Importations Section to organize its listing alphabetically.

6. The failure to use the list as a set of directives to assure nation-wide uniformity of enforcement.

7. The large volume of incoming foreign mail that Customs inspectors at I.M.U.s must examine.

8. The culling out and general non-inspection of first class mail.

9. The incompleteness and variable quality of the information stored in the computerized file system maintained by Revenue Canada Customs and Excise Headquarters.

In relation to the work of the R.C.M.P. Customs and Excise Section, it was found that:

10. There has been limited use of the mailing lists of child pornography subscribers seized by foreign enforcement services as a means of discovering persons who illegally import child pornography into Canada.

11. Canadian enforcement authorities do not appear to have actively contacted the police forces in nations which are significant sources of child pornography with respect to convictions against producers and distributors or the obtaining of seized mailing lists.

In relation to the enforcement practices concerning the distribution and sale of pornography by provincial and municipal police forces, it was found that:

12. Enforcement policies vary widely across Canada.

13. Where provincial guidelines with respect to the enforcement of obscenity provisions of the *Criminal Code* have been established, their application has had highly variable consequences.

14. Provincial policies may affect the operation of agencies having federal jurisdiction.

15. A number of informally adopted enforcement practices have evolved which have made the operation of the obscenity provisions in the *Criminal Code* a hit-and-miss affair, and which in certain instances, are legally unenforceable.

16. Few police forces across Canada have specialized units dealing exclusively with sexual offences or the control of obscene and pornographic matter.

References

Chapter 50: Enforcement Practice

[1] Rompkey, William H., Communique: *To All Members of Parliament and Senators*, Ottawa, May 7, 1980, p. 2.

[2] Revenue Canada Customs and Excise, *Instructions to Port Officers*, Ottawa, February 20, 1976 (Revised October 6, 1977), pp. 7-8.

[3] *Customs Control of Imported Publications* (Document No. 1), (Ottawa, 21 April 1965).

[4] *Ibid.*, p. 8.

[5] S.C. 1980-81, c.C-54.

[6] *Canada Post Office/Customs Instructions for the Routing and Primary Customs Screening of International Mail*, pp. 2-3.

[7] R.S.C. 1970, c.R-9, ss. 7(4), 17(3).

[8] Letter and memorandum received by the Committee from R.R. Schramm, Assistant Commissioner, Director, R.C.M.P. Criminal Investigation, Ottawa. Letter dated February 18, 1983.

[9] R.S.C. 1970, c.R-9, s. 17(4).

[10] Letter from R.R. Schramm (*supra*, note 8).

[11] *Ibid.*

[12] Information concerning the Falcon and All-American investigations was provided to the Committee by Special Agent T. Jenkins, United States Federal Bureau of Investigation, Organized Crime Squad, San Francisco.

[13] Letter and memorandum received by the Committee from Monsieur Remi Bouchard, Associate Deputy Minister, Quebec Ministry of Justice, dated August 19, 1983.

[14] Letter by Staff-Inspector Forbes-Ewing, Metropolitan Toronto Police Force, dated December 3, 1982, quoted in a memorandum issued by the *Metropolitan Toronto Licensing Commission*, dated December 10, 1982.

[15] The Ontario Provincial Police and the Metropolitan Toronto Police Force jointly maintain a special anti-pornography squad, Project "P". The role of this squad constitutes a major factor in Ontario's high incidence of charging under the obscenity-related provisions of the *Criminal Code*.

[16] The Committee attempted to compile a comprehensive listing of the numbers of obscenity prosecutions undertaken by each province over a period of years. Such a listing would have illustrated the practical consequences of provincial policies with respect to enforcement of the obscenity provisions of the *Criminal Code*. The only reliable source of data for the proposed compendium would have been provincial justice statistics; most of the provinces were unable to supply the Committee with such statistics.

Chapter 51

Importation and Seizure

In Chapter 50, *Enforcement Practice*, a review was given of the organization and operation of enforcement practices in relation to the obscenity provision in the *Criminal Code*. In this chapter, the statutes relating to the unlawful importation and seizure of unauthorized goods into Canada are reviewed and research findings are presented in relation to 26,357 seizures of obscene and pornographic matter, including child pornography between 1979 and 1981. This extensive source of information assembled by the Committee provides a basis upon which to assess the amount of child pornography known to enforcement authorities which persons have illegally attempted to bring into the country.

Unlawful Importation

Section 14 of the *Customs Tariff* prohibits the importation into Canada of any goods enumerated, described or referred to in Schedule C of the Act and authorizes forfeiture to the Crown of any such goods. Tariff Item 99201-1 of Schedule C lists the following as goods prohibited entry:

> Books, printed paper, drawings, printings, prints, photographs or representations of any kind of a treasonable or seditious or of an *immoral or indecent* character.[1]

Canadian courts have enunciated a number of general principles concerning the unlawful importation of "immoral or indecent" materials. The test concerning whether imported material is "immoral or indecent" under Schedule C of the *Customs Tariff* is whether the material goes beyond what the contemporary Canadian community is prepared to tolerate. In this respect, it is similar to the "community standards" test in prosecutions for obscenity under the *Criminal Code*.[2] The words "immoral or indecent" in Tariff Item 99201-1 are not synonymous with the word "obscene" in section 159(8) of the *Criminal Code*. A publication may be considered "immoral or indecent", notwithstanding that it might not be considered "obscene" under the *Criminal Code*.[3]

The contemporary Canadian community is arguably less tolerant concerning the depiction of overt homosexual acts than that involving similar acts committed between persons of opposite sexes. Magazines which depict full frontal nudity of males do not fall within the prohibition. But magazines depicting homosexual acts between two persons are prohibited notwithstanding that, were the persons of opposite sexes, the magazines might well fall outside the prohibition. Magazines which depict acts of bondage, cruelty, sadism or masturbation, and which advertise male prostitutes accompanied by pictures of their genitals, are clearly of an immoral or indecent character.[4]

There is no onus on the Crown to adduce evidence of prevailing community standards of tolerance concerning the publications in question.[5] That the same publications were previously imported without difficulty does not preclude the authorities from invoking the Tariff Item 99201-1. Past tolerance or negligence by customs officials is not a bar to subsequent proceedings.[6]

In respect of prohibited importations, the *Canada Post Corporation Act* and the *Customs Tariff* operate in conjunction. Since the *Customs Tariff* prohibits the importation into Canada of "immoral or indecent" representations, whether by mail or otherwise, section 40(1) of the *Canada Post Corporation Act* requires any mail from outside of Canada suspected to contain such representations to be submitted to a customs officer for examination. Under section 40(2) of that Act, the customs officer is authorized to open any such mail, other than a letter. If the mail is found to contain an indecent or immoral representation, the customs office is authorized to seize it under section 14 of the *Customs Tariff*. Where a letter is directed to the customs officer pursuant to section 40(1) of the *Canada Post Corporation Act*, the officer is authorized[7] to cause the letter to be opened by the addressee, or, with the addressee's written permission, to open it himself. If the letter is found to contain an immoral or indecent representation, it is subject to seizure and forfeiture under the *Customs Tariff*. If the addressee cannot be found, or refuses to open the letter, the Canada Post Corporation will treat the letter as undeliverable mail.[8]

Seizure

Whereas section 14 of the *Customs Tariff* prohibits the importation of certain goods and authorizes seizure and forfeiture of them when discovered during the importation process, section 205(1) of the *Customs Act* authorizes the seizure and forfeiture of unlawfully imported goods generally. Accordingly, where the unlawful importation of goods has escaped detection, such goods are nonetheless subject to seizure and forfeiture if found anywhere in Canada. Section 205(1) provides:

> 205.(1) If any person, whether the owner or not, without lawful excuse, the proof of which shall be on the person accused, has in possession, harbours, keeps, conceals, purchases, sells or exchanges any goods unlawfully imported into Canada, whether such goods are dutiable or not, or whereon the duties lawfully payable have not been paid, such goods, if found, shall be seized and

forfeited without power of remission, and if such goods are not found, the person so offending shall forfeit the value thereof without power of remission.

Further, section 248(1) of the *Customs Act* places on the accused the burden of proving lawful importation, subject to the Crown leading evidence to show that the accused had some knowledge, or means of knowledge, concerning the circumstances of importation.[9]

The *Customs Act* also provides for the issuance of "writs of assistance" (which are search warrants in continual effect) pursuant to the investigation of crimes suspected to have been committed against the Act.[10]

Case Studies

The first of the case studies that follow provides an example of the kind of situation in which charging under section 205 of the *Customs Act* is appropriate. The second and third case studies illustrate the practical enforcement consequences of the distinction between the meanings of the terms "obscenity" and "immoral or indecent".

Case Study 1 (R. v. Havelock)[11]

In June, 1972, the accused attempted to bring seven boxes containing 700 pornographic magazines into Canada without declaring them to Customs. The magazines were discovered by customs inspectors at Emerson Manitoba, concealed in a trailer truck loaded with 1,800 cases of cucumbers. The accused, who was driving the truck, declared the cucumbers but made no mention of the boxes of magazines. When the customs officers found the magazines, they estimated their values (ranging from 25¢ to $10 apiece), according to the prices marked on the covers. The accused was charged with possession of illegally imported goods of value greater than $200, contrary to section 205(3) of the *Customs Act*. The accused was convicted at trial, and launched an appeal, which was dismissed by the Manitoba Court of Appeal.

Case Study 2

In Ontario, the June, 1980 issue of *Penthouse* magazine was the subject of public complaints and of complaints from several municipal police forces. After an Ottawa Crown Attorney recommended that charges be laid against the magazine's Toronto distributor, Project "P" searched the company's premises. The company and its president were charged with distributing obscene matter under section 159(1)(a) of the *Code*. Five thousand copies of the impugned issue were seized.

The issue of *Penthouse* in question contained a photographic layout featuring two young girls in the nude near a horse (i.e., suggestions of bestiality), as well as depictions of bondage, mutilation and lesbian acts.

The accused company and individual were tried in Provincial Court in Ottawa. The corporate accused pleaded guilty and received a $500.00 fine, while the charge against the individual was withdrawn. The 5000 magazines seized were forfeited to the Crown. (In a separate county court case, a seizure order under section 160 of the *Code* was granted with respect to the same

issue of *Penthouse*. The judge found the photographic content of the magazine obscene but stated, *obiter*, that sexually explicit language describing fellatio, anal intercourse and cunnilingus, was not obscene.)

Revenue Canada Customs and Excise did not rule the June, 1980 issue of *Penthouse* to be immoral or indecent, and permitted its importation into Canada. The issue had been placed on the Ontario Advisory Council's "with reservations" list; several prominent retailers had refused to carry the magazine.

Case Study 3

The September, 1977 issue of *Penthouse* magazine contained photographs depicting lesbian sexual activities between two females who appeared to be under the age of 18. The two models had freckled faces, youthful hair styles and ribbons in their hair, and were shown wearing leotards and tutus. The acts performed by the models included: touching tongues; squeezing and holding each other's breasts; embracing and fondling; sucking each other's nipples; exposing genitals (from the rear); touching each other's genital areas; and one female placing her face against the other's buttocks. As later attested by sworn depositions, the models were actually 19 and 20 years of age.

In the opinion of the Attorney General of Ontario and officers at Project "P", the magazine was obscene by reason of the layout described. Revenue Canada Customs and Excise received notification accordingly and immediately telexed all border Customs ports, instructing them to prevent the issue from entering Canada, pending a final ruling by the Prohibited Importations Section. A few days later, however, six tractor trailer-loads of the magazines were permitted entry into Ontario.

In order to prevent these inadvertently admitted magazines from being distributed, it was decided to seize these copies under section 160 of the *Criminal Code*. After obtaining the necessary warrant of seizure, Project "P" took possession of 85,000 copies of the magazines.

Following the Project "P" seizure, the Prohibited Importations Section ruled that the September, 1977 issue of *Penthouse* was *not* immoral or indecent, and hence, could not be denied entry into Canada. Over 500,000 copies seized by Revenue Canada were released, while Project "P" still retained possession of the 85,000 copies.

The Ontario Advisory Council recommended that Ontario distributors should not handle the released copies, but one company apparently did seek to distribute them.

At the show cause hearing held in county court pursuant to the seizures under section 160, the 85,000 magazines were found obscene and ordered forfeited to the Crown. The forfeiture was upheld by the Ontario Court of Appeal, and leave to appeal to the Supreme Court of Canada was denied in 1979. The 85,000 copies were destroyed in April, 1979.

National Survey of Seizures: 1979-81

As noted in Chapter 50, *Enforcement Practice*, complete information in an aggregated form does not exist for Canada in relation to seizures of illegally imported immoral or indecent materials. This fact underscores the problem in

the existing mechanisms for the collection and storage of information concerning seizures of sexually explicit matter. These problems include:

1. The absence of a single, comprehensive source of information.

2. Incomplete or insufficient information being entered in the computerized files of Revenue Canada Customs and Excise.

3. The failure of many District Offices of Revenue Canada Customs and Excise to contribute information to Ottawa.

4. The duplication of entries in the computerized files.

5. The incorporation by R.C.M.P. Customs and Excise Headquarters into its own central, computerized file system of the incomplete computerized file maintained by Revenue Canada Customs and Excise.

In order to obtain information about the importation of immoral or indecent materials, including child pornography, the Committee conducted a survey that involved:

1. Visits to all Regional Customs Offices where a manual search of the seizure files was undertaken of records from 1979 to 1981.

2. Information derived from the central computerized file systems of the R.C.M.P. Customs and Excise Section and the Revenue Canada Customs and Excise Division.

This information was transferred to a standard research protocol developed for the purpose of identifying the types of materials seized and specifying the volume of different types of child pornographic matter.

Insofar as the Committee is aware, the information obtained on 26,357 seizures represents the first time that an attempt has been made to ground conclusions concerning the importation of pornography into Canada on empirical evidence derived from the records of the relevant national enforcement agencies. The Committee acknowledges the co-operation of the R.C.M.P. and Revenue Canada in making available their records for analysis. The information obtained permits detailed documentation concerning the quality, type and regional distribution of pornographic material detected in the process of being brought into the country illegally. The findings presented are based on seizures by the R.C.M.P. and Revenue Canada Customs and Excise, rather than those made by local and provincial police forces. Thus, information concerning charges under Section 159 or Section 164, and (for the most part) seizures under Section 160 of the *Criminal Code*, is not provided here.

Of special interest to the Committee was the opportunity to obtain information concerning seizures of child pornography. Since the available Customs and R.C.M.P. records often list only the titles of publications seized, identifying such matter as child pornography posed a special problem. This difficulty was surmounted with the assistance of an officer seconded from Project "P". This officer, a specialist with long experience in those areas of law enforcement

involving pornography, was able to identify which of the seized materials were child pornography by examining the listed titles. The only titles identified as child pornography were those with which the officer was directly familiar as a result of his work with Project "P". Titles which on their face appeared to have some association with children or youths, but of which the officer had no first-hand knowledge, were assumed not to be true child pornography. Only materials featuring actual children or youths were classified as child pornography, and thus the class of material referred to as pseudo-child pornography was excluded. In practice, there is usually a clearcut demarcation in the depiction of children and that of adults in most types of pornography. Where there was doubt, the materials were assigned to the adult category.

In order to preclude information being obtained about enforcement practices for a single, and possibly, exceptional year, findings were assembled for the three year period from 1979 to 1981.

All Seizures of Pornography: 1979-81

The findings given in Table 51.1 represent the total *number of seizures* for the three year period rather than the *number of items per seizure*. In an individual seizure, one, a few, dozens, hundreds or thousands of items may have been involved; these findings are given in subsequently presented tables.

Between 1979 and 1981, 1.10 seizures of pornography were made for every 1000 Canadians. On average, only 0.37 seizures were made for every 1000 persons in each of 1979, 1980 and 1981. Because the information obtained by the Committee is unique, there is no comparative basis upon which to calibrate these results. In the Committee's judgment derived from its findings on the distribution and accessibility of pornography across Canada and the results of the National Population Survey (see Chapter 54), the volume of seizures is indeed small. The findings suggest that:

1. Not much pornography is entering the country illegally; or
2. Much more pornography enters the country illegally than is detected and seized (i.e., that the enforcement system is porous).

A review of the regional variations indicates that the second possibility is more likely, namely, that extensively more pornography is illegally brought into Canada than the relatively small amount being detected by enforcement authorities.

The results given in Table 51.1 indicate that the rate of seizures of all forms of pornography (i.e., the number of seizures per 1,000 persons) varies by region and generally tends to increase from east-to-west. This phenomenon may be attributable to: variations in the relative number of persons in different regions who purchase matter of this kind; regional differences in the volume of pornography purchased by the average user; or variations in the types of pornography most commonly purchased in different parts of the country. Patterns

Table 51.1

Seizures of Sexually Explicit Material, 1979-81: by Province of Seizure and Numbers of Seizures per 1000 Persons

Province	Total Seizures	1980 Canadian Population (in 1000's)	Seizures per 1000 Persons
Newfoundland	349	579.6	0.60
Prince Edward Island	8	124.4	0.06
Nova Scotia	670	852.8	0.79
New Brunswick	581	707.6	0.82
Quebec	3,231	6,312.0	0.51
Ontario	9,149	8,574.4	1.07
Manitoba	2,534	1,029.5	2.46
Saskatchewan	2,115	970.1	2.18
Alberta	4,670	2,081.4	2.24
British Columbia	3,041	2,640.1	1.15
Northwest Territories	8	43.0	0.19
Yukon Territory	1	21.4	0.05
TOTAL	26,357	23,936.3	1.10

National Survey of Seizures. Information from Revenue Canada Customs and Excise (61.3 per cent) and R.C.M.P. Customs and Excise (38.7 per cent).

of this kind may also be explicable in terms of regional economic variations (i.e., in poorer areas, fewer persons may have sufficient disposable income to indulge in such "luxury" items as adult magazines and books). The findings from the Audit Bureau of Circulation (see Chapter 54)) indicate the existence of an east-to-west gradient in the demand for pornographic magazines.

The regional differences noted may result entirely or in part from variations in the effectiveness of enforcement at preventing immoral or indecent matter from entering the country. In this regard, the relative seizure record of Manitoba between 1979 and 1981 was the most impressive of any province. This fact may, in part, result from the innovative methods that have been implemented at Winnipeg's International Mail Unit (see Chapter 50). It is likely that the success achieved at this one location was sufficient to inflate the figures for all of Manitoba, making it Canada's leader at intercepting illegally imported pornography.

Until more complete and compelling evidence is available than that assembled, the Committee concludes that alterations in existing enforcement

practices, such as those implemented for Manitoba, would result in the detection of a considerably higher volume of illegally imported pornography into Canada.

Seizures of Child Pornography: 1979-81

In some circles, it has been suggested that the availability and importation of child pornography have reached epidemic proportions in Canada. In relation to the latter concern, the findings given in Table 51.2 do not support this claim. **Of 26,357 seizures between 1979 and 1981, a total of 330, or 1.3 per cent, were adjudged to be child pornographic matter. On the basis of known materials seized, it is evident that child pornography constitutes a tiny proportion of all pornography entering Canada unlawfully.**

Table 51.2

Seizures of Child Pornography, 1979-81: by Province of Seizure and Numbers of Seizures per 1000 Persons

Province	Total Seizures	1980 Canadian Population (in 1000's)	Seizures per 1000 Persons
Newfoundland	4	579.6	0.0069
Prince Edward Island	0	124.4	—
Nova Scotia	9	852.8	0.0105
New Brunswick	7	707.6	0.0098
Quebec	146	6,312.0	0.0231
Ontario	73	8,574.4	0.0085
Manitoba	26	1,029.5	0.0252
Saskatchewan	7	970.1	0.0072
Alberta	28	2,081.4	0.0135
British Columbia	30	2,640.1	0.0113
Northwest Territories	0	43.0	—
Yukon Territory	0	21.4	—
TOTAL	330	23,936.3	0.0138

National Survey of Seizures. Proportion of seizures per agency were: Revenue Canada Customs and Excise (81.5 per cent) and R.C.M.P. Customs and Excise (18.5 per cent).

The child pornography seizure rates listed in Table 51.2 provide a far less clear picture of an east-to-west gradient in the relative numbers of seizures. Quebec, for instance, has one of the lowest seizure rates listed in Table 51.1, but the second highest rate listed in Table 51.2. For Saskatchewan, precisely

the opposite is true; that province has one of the highest rates listed in Table 51.1, but the second lowest in Table 51.2. The muddled picture of regional variations afforded by Table 51.2 is likely a factor of the small number of child pornography seizures that occurred in the three year period.

Of the possible sources of supply other than importation, domestic commercial production, distribution and sale are ruled out on the basis of the findings given in Chapter 52; the only avenue remaining open is informal home or private production unless, of course, substantial quantitites of child pornography enter the country without detection.

In a single investigation (the All-American Studios case, see Chapter 50), the R.C.M.P. was provided with a list of 266 Canadian customers of a major child pornography producer in the United States. Considering this fact, in the Committee's judgment, it is totally improbable that the 330 seizures carried out by both the R.C.M.P. and Revenue Canada from 1979 to 1981 represents all, or even most, of the child pornography mailed or carried illegally into Canada over that span of time.

At present, there exists no satisfactory, lawful means by which to gauge the level of adequacy of the enforcement systems currently employed to detect and seize child pornography, and other material of an immoral or indecent character. Virtually the only trustworthy means of estimating the number of items successfully smuggled into Canada each year would be to resort to the methods of the consumer — that is, to mail and carry a certain volume of child pornography into the country using different border crossings and different International Mail Units in order to obtain a representative sampling of regional variations in the seizure success rates. The proportion of all items thus smuggled that were detected and seized would indicate that proportion of all smuggled pornography that Customs and the R.C.M.P. manage to seize. From this proportion, it would be then possible to extrapolate from the 330 seizures documented between 1979 and 1981, and to arrive at an estimate of the number of items of child pornography that eluded detection and seizure during that time period. Since a study of this kind would have involved systematic violations of Section 205(1) of the *Customs Act* and Section 164 of the *Criminal Code*, it was not undertaken by the Committee for both ethical and legal reasons.

On the basis of the evidence available, however, it is clear beyond reasonable doubt that a number of crippling problems beset the detection mechanisms currently in operation. These problems include: variable interagency co-operation and communication; vague Customs guidelines for seizure that lead to inconsistent enforcement; the inaccessability to Customs line officers of the bi-weekly list of rulings by the Prohibited Importations Section; the incomplete collection of seizure-related information by Revenue Canada Customs and Excise headquarters in Ottawa; the routine non-inspection of first class mail and the assignment of too few inspectors to examine massive volumes of other types of mail; and restrictive provincial policies which hamstring local law enforcers, and which influence the enforcement practices of other

agencies. In addition, the consumers of child pornography have developed sophisticated importation techniques to guard against detection of the material, whether out of a dread of having their identities discovered, or as a means of protecting an expensive investment. Taken together, all of these factors indicate that the seizure success rate with respect to child pornography is very low.

Types of Child Pornography Seized

When a comparison is made between the ratio of seizures of child pornography to all seizures of pornography and the ratio of the number of items per seizure of child pornography to all items of pornography, a consistent pattern emerges. Seizures of child pornography constituted 1.3 per cent of all seizures of pornography; the comparable proportion for items of child pornography to all items of pornography seized was 1.7 per cent. In the latter instance, on average, 15.9 items were included per seizure of child pornography in comparison to 12.1 items for all items of pornography.

Table 51.3

Contents of Seizures of Sexually Explicit Materials, 1979-81

Type of Material Seized	Enforcement Service					
	R.C.M.P.		Customs		Total	
	No.	%	No.	%	No.	%
Magazines/comic books	47,776	27.7	65,865	45.3	113,641	35.8
Books	97,561	56.6	42,030	28.9	139,591	44.0
Photographs	5,786	3.4	4,187	2.9	9,973	3.1
Films	12,660	7.3	13,860	9.5	26,520	8.4
Videotapes	3,754	2.2	5,418	3.7	9,172	2.9
Catalogues	4,327	2.5	11,585	8.0	15,912	5.0
Adult newspapers	77	0.1	911	0.6	988	0.3
Playing cards/ records	150	0.1	927	0.6	1,077	0.3
Audio tapes	215	0.1	552	0.4	767	0.2
TOTAL	172,306	100.0	145,335	99.9*	317,641	100.0

National Survey of Seizures. Sources — Revenue Canada Customs and Excise and R.C.M.P. Customs and Excise.

*rounding error

While persons seeking to import child pornography illegally appear to have more items per seizure, child pornography *per se* represents only a tiny proportion of all detected illegally imported pornography. This contrast is even

more striking when it is recalled that some seizures of pornography may involve thousands of items, such as an issue of a widely circulated magazine.

Table 51.4

Contents of Seizures of Child Pornography, 1979-81

Type of Material Seized	Enforcement Service					
	R.C.M.P.		Customs		Total	
	No.	%	No.	%	No.	%
Magazines	1,700	40.7	439	41.5	2,139	40.8
Photographs	1,681	40.2	428	40.5	2,109	40.3
Films	743	17.8	173	16.4	916	17.5
Videotapes	5	0.1	5	0.5	10	0.2
Catalogues	50	1.2	12	1.1	62	1.2
TOTAL	4,179	100.0	1,057	100.0	5,236	100.0

National Survey of Seizures. Sources — Revenue Canada Customs and Excise and R.C.M.P. Customs and Excise.

The findings in Table 51.4 indicate that the total number of items of child pornography seized by Revenue Canada and the R.C.M.P. between 1979 and 1981 was 5236. The fact that the R.C.M.P. was responsible for only 61 seizures is, by itself, deceptive since that agency was responsible for the confiscation of almost four times as many items as Revenue Canada. Given the type of investigations that the R.C.M.P. most frequently conducts and the fact that it took possession of an average of 69 pieces of child pornography in each seizure, it is apparent that in most of the R.C.M.P. seizures, substantial private collections were seized. An average of about four items were held in each Revenue Canada seizure. Thus, the figures for Revenue Canada seizures give a rough indication of the number of articles of child pornography in a single importation, as well as the proportion of all detected illegally imported child pornography accounted for by magazines, films, photographs, videotapes and catalogues. (The proportions of all seizures made up by each medium are almost identical for the Revenue Canada and the R.C.M.P. seizures. This is not the case for the seizures of all types of pornography. The correspondence between the relative composition of seizures made by each agency suggests that if the R.C.M.P. seizures primarily involved private collections, the correspondence may suggest that virtually all child pornography entering the country finds its way into collections of this kind.)

The Revenue Canada figures in Table 51.4 support the conclusion that child pornography generally is not imported for commercial distribution within Canada, since a professional distributor would have to bring the product into the country in quantities far more sizeable than four items per shipment in order to maintain an economically viable operation.

An important distinction between the seizure of all types of pornography and of child pornography lies in the relative numbers of photographs detected. Only 3.1 per cent of the number of all seized items of pornography were photographs, while 40.3 per cent of the number of items of child pornography confiscated were photographs. This finding confirms that individual photographs are a preferred medium in the child pornography market. Since photographs constitute perhaps the easiest medium for small-scale production, their popularity may be indicative of the conditions under which much child pornography is made (e.g., by individuals sexually abusing children or by the pimps or customers of child prostitutes).

Video tapes constitute a tiny proportion of all pornography, and of all child pornography, seized by the R.C.M.P. and Revenue Canada. This finding is deceptive. Video cassette duplicating equipment is not inordinately expensive or difficult to use, as is the equipment required for the reproduction of motion pictures. In order for a pornographic video cassette to become readily available on the domestic market, only one copy need be smuggled into the country. By contrast, mass reproduction of a film would require not only access to a professional laboratory requiring considerable funding, but also considerable expertise; alternately, would-be distributors of immoral or indecent films could produce them in Canada or attempt to smuggle in large numbers of copies. While many copies of a film would be large, bulky, and prone to be detected and seized, a single video cassette is compact, lightweight and can be hidden more readily. Also, a substantial amount of time is required to examine a video tape unlike a magazine, whose contents may be inspected in a few seconds. Thus, even if a pornographic video cassette is found on the person of an individual entering the country, the Customs inspector will seldom have the time to review its contents in detail (assuming that suitable physical playback apparatus is available; Beta and VHS and one-quarter inch formats would be required).

In spite of the low seizure figures for 1979 to 1981, the Committee considers that the videotape medium constitutes a potentially major problem with respect to enforcement of the laws designed to regulate pornography. It is evident from the proportion of advertisements featuring video tapes in the major pornographic magazines circulated across Canada (see Chapter 53) that this medium has grown rapidly since the introduction of video equipment and that it can be expected to expand further in the future. Likewise, it cannot be assumed on the basis of the R.C.M.P. seizures listed that the number of items in the collections of most Canadian child pornography customers is 69. The results of R.C.M.P. searches in the All-American investigation (see Chapter 50) suggest that the size of collection varies considerably from one collection to the next.

Summary

The following are among the more salient findings emerging from the statistics on R.C.M.P. and Revenue Canada seizures:

1. There exists an east-to-west gradient in the rate of seizures of all types of pornography. This pattern may be attributable in part to variations in demand, but in the Committee's judgment a substantial proportion of this variation is also accounted for by regional differences in enforcement practice.

2. Compared to the total detected volume of pornography being imported illegally, there is little child pornography.

3. While it seems likely that the total amount of child pornography entering the country may be far greater than that seized, there is no massive importation of these materials.

4. The findings presented in this chapter do not negate the fact that child pornography is a serious problem. The informal, private production of sexually oriented materials involving children, as shown in Chapter 52, is a real phenomenon in Canada.

As a number of case studies in the Report indicate, there have been instances in which the use of child pornography was co-associated with sexual assaults on children. Thus, *any* child pornography entering the country is cause for concern, but it is misleading to suggest that child pornography is flooding into Canada, or has become a readily available retail commodity. The perception in some quarters that there has been a drastic influx of this kind of material may result from a tendency to confuse child pornography with other forms of pornography (which, as the figures obtained from the Audit Bureau of Circulation show, is widely marketed, and has increased in popularity at a startling rate in recent years).

In light of its recommendations concerning amendments to the *Criminal Code* given in Chapter 3, and on the basis of its review of statutory provisions, enforcement practices and research findings given in Chapters 48, 49, 50 and 51, the Committee recommends that:

1. **The relevant definitional, seizure and forfeiture provisions in the *Customs Tariff*, *Customs Act*, and *Canada Post Corporation Act* be amended to conform with the *Criminal Code* prohibitions against visual representations of explicit sexual conduct involving persons under 18 years of age.**

2. **The *Broadcasting Act*, and regulations made thereunder, be amended to conform with the *Criminal Code* prohibitions against visual representations of explicit sexual conduct involving persons under 18 years of age.**

3. **In conjunction with the Office of the Commissioner, the federal Department of Justice in consultation with Revenue Canada and the Department of the Solicitor General review the operation of the central registry of Customs seizures with a view to assuring its efficient operation as a means of identifying the importers of child pornography.**

4. **The federal Department of Justice in conjunction with the Department of the Solicitor General, Revenue Canada, and the Office of the Commissioner:**

   (i) Announce publicly, including notices posted at entry points and a statement contained in Customs Declaration Forms, that the R.C.M.P. is actively seeking the co-operation of foreign enforcement agencies to

obtain information concerning the producers and distributors of child pornography, and that the R.C.M.P. intends to conduct a rigorous investigation of any suspected case of unlawful importation of child pornography;

(ii) Instruct the R.C.M.P. to seek out, where possible, the mailing lists of all major commerical producers and distributors of child pornography, and to undertake thorough investigations on the basis of the information so provided.

References

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[1] Emphasis added.

[2] *Deputy Minister of National Revenue for Customs and Excise v. Tache* (1982), 65 C.C.C. (2d) 250 (Fed. C.A.). See also *Popert v. The Queen* (1981), 19 C.R. (3d) 393 (Ont. C.A.). But see *Re Priape Enrg. and The Deputy Minister of National Revenue* (1979), 52 C.C.C. (2d) 44 (Que. Sup. Ct.); and *Re North American News and Deputy Minister of National Revenue for Customs and Excise* (1974), 14 C.C.C. (2d) 63 (Ont. Co. Ct.).

[3] *Re Han and Deputy Minister of National Revenue for Customs and Excise* (1972), 8 C.C.C. (2d) 399 (B.C. Co. Ct.).

[4] *Re Priape Enrg. and The Deputy Minister of National Revenue*, *supra*, note 2.

[5] *Re North American News and Deputy Minister of National Revenue for Customs and Excise*, *supra*, note 2. See generally *Re Winkler and Deputy Minister of National Revenue* (1973), 15 C.C.C. (2d) 168 (Ont. Co. Ct.).

[6] *Re Priape Enrg. and The Deputy Minister of National Revenue*, *supra*, note 2.

[7] *Canada Post Corporation Act*, S.C. 1980-81, c. 54, ss. 40 (2)(a), 40 (2)(b).

[8] *Canada Post Corporation Act*, S.C. 1980-81, c. 54, s. 40 (2).

[9] *R. v. Shelley* (1981), 59 C.C.C. (2d) 292 (S.C.C.).

[10] *Customs Act*, R.S.C. 1970, . C-40, s. 145.

[11] *R. v. Havelock* (1974), 20 C.C.C. (2d) 186 (Man. C.A.).

Chapter 52

Production and Distribution of Child Pornography

In its Terms of Reference, the Committee was instructed to review the use of Canadian children in the making of pornographic materials. The Committee recognizes that this is an issue of deep public concern. As in the case of all types of pornography, there is virtually no documentation for Canada concerning the extent of child pornography, the types of materials involved and whether Canadian children are involved in the production of these materials.

The results of the investigations given in this chapter pertain to the sources of commercial production and distribution of child pornography; this is followed by a review of the importation practices used by persons purchasing this matter abroad. In relation to the non-commercial production of child pornography in Canada, the Committee drew upon the findings obtained in its several surveys and its meetings with enforcement authorities. The findings of the National Population Survey provide an estimate of the proportion of Canadians who have been subjects of sexually explicit pictures taken by persons who persuaded, bribed or forced them. The findings reveal the existence of an informal and fragmented system of private production of child pornography, one primarily undertaken to serve the sexual gratification of persons taking these pictures. Case studies are given which illustrate the different situations in which children have been involved in the making of sexually explicit depictions.

Sources of Research Information

Throughout the Report, information has been provided about the design and findings of the several surveys conducted by the Committee. In relation to seeking documentation about the distribution and production of child pornography in Canada, the Committee drew upon the following sources of information.

1. National Accessibility Survey of Retail Outlets.
2. National Police Force Survey — 28 police forces in all provinces and the Yukon.

3. National Population Survey.

4. Periodical Distributors of Canada.

5. Provincial Attorneys General. Visits to senior officials of all provincial departments.

6. Revenue Canada Customs and Excise Division, Headquarters and Regional Branches.

7. Review of major court decisions concerning obscenity.

8. R.C.M.P. Customs and Excise Section.

In each of the Committee's contacts with senior officials of institutions or associations, information was sought concerning the production and distribution of child pornography in Canada. It is on the basis of these several sources that the Committee's findings are derived.

Commercial Production

On the basis of the sources of information reviewed, the Committee found that there was virtually no domestic commercial industry which used Canadian children for the commercial production of sexually explicit graphic, photographic or cinematographic depictions. By "commercial production" is meant the making of matter with open sale or rental as its primary purpose. None of the sources of information drawn upon by the Committee had positive and confirmed knowledge of any production of child pornography for commercial distribution in Canada.

The Committee learned of three possible exceptions. The first involved a magazine entitled, "Let's Visit Canadian Moppets and Teens" which was being held on file at Project "P". The magazine is a glossy and professional production and features nude photographs of male and female children and adolescents, mostly in a wilderness setting (ostensibly in Canada, and evidently a nudist camp). Since the magazine was published in California, and since the surroundings in which the photographs were taken are not identifiable, it has neither been determined how many, if any, of the children depicted were Canadian nor whether the shots were actually taken in Canada. The nationality of the publisher does not decrease the likelihood that the children were Canadian, since the Committee has been advised that foreign companies distributing child pornography will often purchase photographs of children taken in other countries (including Canada) for inclusion in magazines.

While the Committee learned of instances from the National Population Survey in which persons had had sexually explicit pictures taken of themselves, in none of these incidents was it reported that these pictures had been taken for the purpose of commercial distribution. In the extensive review of court decisions and the review of the 6203 cases of sexual offences against children documented in the National Police Force Survey, the Committee identified only two

instances where it appeared that the production of child pornography may have been attempted for commercial purposes.

- *32 year-old male.*

In January, 1980, the Metropolitan Toronto Police Force filed an occurrence report, after receiving a complaint from a 17 year-old boy implicating a 32 year-old male in the making of pornographic films that featured female juveniles. According to the complainant, the suspect's practice was to recruit females at random from the street, and to offer them money to participate in his films. The complainant further stated that, while at the suspect's residence, he had seen the man engaged in various types of sexual activity with girls between the ages of 12 and 15 years. Allegedly, the suspect routinely paid $100 each to the females used for his films. It was stated that, aside from receiving sexual gratification from the films, the suspect also sold and traded them with persons having similar sexual preferences.

The complainant alleged that the suspect was a slum landlord, and hence had a ready source of finances upon which to draw in funding his cinematographic projects. The police report states that the complainant's credibility is high, in spite of the fact that he was embroiled in a tenancy dispute with the suspect. A copy of the report was forwarded to the Metropolitan Toronto Police Force Youth Bureau, and to Project "P".

- *R. v. McCormick.*[1]

The accused, a 29 year-old male, first came to the attention of the police in July, 1978, when he became involved in a dispute with his landlord and threatened the latter with a firearm. As a result of this altercation, police executed a search warrant against the accused's apartment, and there discovered 21 boxes containing over 10,000 photographs (black and white), negatives and slides, as well as numerous films and books, all depicting male juveniles in sexually suggestive poses or engaged in sex acts. The acts portrayed include fellatio, buggery and bondage. Later investigation revealed that most of the photographs had been produced in the accused's apartment.

Project "P" was notified, and assumed responsibility for the police investigation. The material found in the accused's apartment was seized and the following criminal charges were laid: two weapons charges and one charge of possession of obscene photographs for the purpose of distribution under section 159(1)(a) of the *Criminal Code*.

Two subsequent searches were conducted by Project "P". In the first, photographic equipment and other material were seized at the accused's apartment. The second search took place at the North York Public Library branch where the accused was employed as an audio-visual technician. In addition to personal papers belonging to the accused, a 30 minute video-cassette was seized, on which were recorded scenes of whipping and bondage involving two male youths. The youths who participated in these scenes, as well as in a number of the still photographs, were identified as employees of the public library at which the accused worked. The library's theatre had served as the shooting location of the photographs and scenes in question.

Other material seized included: (i) large numbers of instruments of bondage and torture (such as leg irons, thumb cuffs, handcuffs, chains, ropes, straps, wrist-restraining straps, spurs and whips); (ii) a number of short stories written by the accused with sado-masochistic and homosexual-pedophilic themes; (iii) customer lists drafted by the accused, with detailed indexes and codes; (iv) advertising copy written by the accused in reference to pedophilic materials (on some of these pages were written block advertising rates); (v)

draft scripts for pornographic films; (vi) release stamps and forms of the kind employed in obtaining authorization from photographic models to use pictures taken of them; (vii) copies of the sections of the *Criminal Code* that relate to obscenity, and letters written to Members of Parliament by the accused concerning the obscenity laws; and (viii) correspondence conducted by the accused under an alias, concerning pornographic books and magazines.

In all, at least 10 juveniles were used by the accused in the making of pornographic photographs. The standard ploy used by the accused to secure the co-operation of his subjects was to claim that the photographs would be published in magazines in the United States where none of the youths' acquaintances would see them, and that such publications would earn them large sums of money. Apparently, however, none of the models ever received payment from the accused.

To the initial charges against the accused were added two counts of counselling to commit an act of gross indecency, and one count of making obscene pictures contrary to section 159(1)(a) of the *Criminal Code*. At trial, the accused pleaded guilty to the two counselling charges, and not guilty to the two separate obscenity charges, namely, making obscene photographs and possessing obscene photographs for the purpose of distribution.

With respect to the charge of making obscene photographs, the trial Judge held that the definition of obscenity in section 159(8) should be applied notwithstanding that the photographs in question were arguably not "publications". On this point, he followed Chief Justice Laskin's minority opinion in the Supreme Court of Canada case of *Dechow v. The Queen*.[2] The trial Judge further held that, on a charge of making obscene photographs under section 159(1)(a), it is sufficient for the Crown to prove that the accused made the photographs and that the photographs were obscene; it was not necessary for the Crown to prove that the photographs so made were intended to be published, distributed or circulated.[3] That the photographs were made by the accused, and that they were obscene within the legal test of obscenity outlined in section 159(8) of the *Criminal Code*, there was absolutely no doubt:[4]

> "In my view, what is contained in these pictures goes beyond what the Canadian community is prepared to tolerate even in the relatively liberal atmosphere of contemporary times. One need only refer, as a particular example, to the pictures depicting teenage boys engaged in fellatio and in sado-masochistic roles replete with the hardware of sexual deviance such as handcuffs, whips, chains, etc. It is obvious from even a cursory viewing that the pictures and slides seized by the police and entered as exhibits to this trial have, as their dominant characteristic, either sex or a combination of sex and cruelty or sex and violence, and that a dominant characteristic of the nearly six thousand such pictures of this nature is the undue exploitation of these factors."

Accordingly, the accused was convicted of the offence of making obscene photographs contrary to section 159(1)(a) of the *Criminal Code*.

With respect to the charge of possessing obscene photographs for the purpose of distribution, the trial Judge noted that this offence does not oblige the Crown to prove actual distribution of the photographs, but only possession of the photographs coupled with a "perfected intention" to distribute them. That the photographs were obscene in the legal sense was beyond question;

the key issue on this aspect of the case was: Had the Crown proven beyond a reasonable doubt that the accused intended to distribute them?

The trial Judge concluded, after a thorough examination of the evidence, that the Crown had proven the accused's intention to distribute the impugned photographs. Several factors compelled this conclusion, notwithstanding the accused's strenuous protestations to the contrary: (i) the accused's exhortations to his photographic subjects to assume progressively more explicit poses, in order to make the photographs more "marketable"; (ii) the detailed customer lists in the accused's possession; (iii) the block letter advertisements and tentative commercial names ("Can-Pix" and "Foto-Fax") developed by the accused; (iv) the stamped model release forms which the accused employed; and (v) the enormous quantity of photographs taken, many of which were duplicated several times and in various sizes of enlargement. Accordingly, the accused was found guilty of the offence of possessing obscene photographs for the purpose of distribution, contrary to section 159(1)(a) of the *Criminal Code*.

The accused received a suspended sentence with respect to two obscenity offences. With respect to the two counselling offences, he was sentenced to two terms of six months' imprisonment, to be served concurrently, and was placed on probation for three years. His conditions of probation were as follows:

- The accused was not to associate with children younger than age 16, except in the context of a social gathering.
- The accused was prohibited from owning or using any form of camera, photographic, film or video-recording equipment, except for purposes of work related activity.
- The accused was prohibited from owning or having in his possession any obscene photographs or written matter with themes of homosexual pedophilia.
- The accused was required to seek steady employment upon being released.
- The accused was required to report to his probation officer every two weeks following his release.
- The accused was required to continue receiving intensive psychiatric treatment for as long as was necessary.

The accused's term was to be served in a detention centre where it would be possible for him to receive further psychiatric treatment. The trial Judge ordered that a copy of the accused's probation report be sent to him every three months.

Reasons for sentence included the fact that no violence had been used against the youths in obtaining their co-operation, that no physical injuries had been suffered by the participants, and that the accused had responded well to psychiatric treatment received since his arrest.

The accused successfully appealed against this sentence to the Ontario Court of Appeal.[5] The Court allowed the appeal, and reduced the sentence of incarceration to time served (approximately nine weeks). In addition to the terms of probation imposed by the trial Judge, the Court added the condition that the accused continue psychiatric treatment with the psychiatrists who had been attending him under arrangements approved by his probation officer. The Court's principal reasons for varying the accused's sentence were:[6]

"The main evidence against the appellant on all counts consisted of a large number of photographs of young boys taken by him and found in his apartment. The psychiatric reports disclosed pedophiliac tendencies which had been treated by psychiatrists including one who specializes in the treatment of persons suffering from sexual problems. Treatment between arrest and trial had resulted in a marked improvement in the appellant. The psychiatrists testified that his sexual problems were treatable; that he would continue to benefit from treatment; and that he would probably regress if incarcerated. The psychiatrists were confident that, given continued treatment, he was not likely to present a danger to society.

Taking all these considerations into account, I am of the opinion that the sentence imposed on him was fit for his offence at the time it was imposed, but we cannot ignore the further information which has been placed before us. He was incarcerated at the Ontario Correctional Institute where facilities for psychiatric treatment are available, although not of the specialized kind required to treat his sexual disorders. He was not released on bail pending his appeal but has continued to serve the sentence imposed. After incarceration he suffered a severe physical upset which appears to have been prompted by emotional disturbance necessitating emergency treatment in a Toronto hospital. This episode must be considered in the review of his sentence and appears to bear out the prediction made by the psychiatrists that incarceration was likely to cause a break in his progress which had been so positive under his previous psychiatric treatment."

On the basis of the evidence available, the Committee concludes that there is virtually no commercial production of child pornography in Canada, and that the detected ventures attempted in this regard have been small, without exception, unsuccessful, and relatively promptly identified by enforcement services. The findings indicate that with respect to the control of the commercial production of child pornography in Canada, the various enforcement agencies are effectively and efficiently controlling this problem at the present time. These services, however, will likely face a situation of different proportions in the future as audio-visual reproduction equipment becomes more readily available and its use facilitates the easy and cheap reproduction of child pornography.

There is no evidence that audio-visual reproduction of child pornography tapes is as yet a major enforcement problem in Canada. Its control, however, will entail the development of new and more sophisticated enforcement practices than those used to identify and control the commercial production of individual photographs or magazines.

Commercial Distribution

"Commercial distribution" signifies the dissemination of a product to the retail marketplace through recognized, legitimate professional channels, such as wholesaling companies. As with commercial production, **the Committee**

learned that the commercial distribution of child pornography within Canada is virtually non-existent. None of the wholesalers belonging to the Periodical Distributors of Canada has ever been detected smuggling, importing, distributing or selling child pornography anywhere in Canada by any enforcement agency. On the basis of information provided by enforcement agencies and voluntary associations, its review of court cases and the findings of the national surveys conducted, the Committee learned of only two confirmed instances involving the commercial distribution of child pornography (see Case Study 5, Chapter 48; and *R. v. Ariadne Developments et al.*, cited below). In a third case, (*R. v. The MacMillan Company of Canada*), the accused corporation was acquitted of the charge of possessing obscene books for the purpose of distribution.

- *R. v. Ariadne Developments et al.*[7]

As a result of searches conducted by the Halifax City Police in late 1972 and early 1973, 21,509 books were seized from the corporate accused's principal place of business and from an express truck which had been seen being loaded at such premises. A police officer had purchased two of these books (which later became exhibit F-16 at trial) from the manager of a retail outlet for books, candy and tobacco in Bedford, Nova Scotia. The store manager had obtained these books from A.B.C. News, a subsidiary of the corporate accused. She typically received three to four hundred books each month from A.B.C. news and from the co-accused, Creelman, who was an agent of the corporate accused and apparently general manager of A.B.C. News.

Creelman and the corporate accused, Ariadne Developments Ltd., were charged under section 159(1)(a) with possession of obscene matter for the purpose of distribution. At trial, both accused were convicted, and were sentenced to fines of $500 (Creelman) and $12,500 (Ariadne Developments Ltd.).

The accused appealed to the Nova Scotia Court of Appeal. In delivering its judgment, the Court outlined the nature of the publications alleged to be obscene:[8]

> "The two books which form ex. F-16 are entitled "Down On The Farm" and "Daddy's Playmates". The latter is, simply put, primarily a running account of an incestuous relationship between a father and daughter, mother and son and sister and brother, including descriptions not only of sexual intercourse between father and daughter, mother and son and sister and brother, but also of sodomy, cunnilingus and fellatio between the various members of the family. In addition, there are descriptions of acts of intercourse and other sexual acts between the members of the family and other persons. The book concludes with a description of the seduction of his granddaughter by the father. There is absolutely no story or plot unless it can be said that the descriptions of the sexual activities of the members of the family constitute a story.
>
> The second book in ex. F-16, "Down On The Farm", is an account of the sexual activities of two male teenagers, including the description of an act of bestiality between one of them and a chicken.

A random sampling of the seized books includes "The Animalizers", which on its cover is described as being "an analysis and case histories of man's most infamous taboo human, animal sex content". This description aptly fits the contents which are but a series of accounts of sexual relations between humans and various animals.

"Apple For The Teacher" is a description of sexual activity of a female school teacher, primarily with her male students, including descriptions of acts of intercourse, sodomy, fellatio and cunnilingus performed singly and sometimes jointly with a number of her male students.

"Blow By Blow" is a description of a series of sexual activities between males."

After noting the relevant principles concerning the definition of obscenity in section 159(8) of the *Criminal Code*, and taking into account the testimony of defence witnesses, the Court concluded unequivocally that the impugned publications were obscene:[9]

"The main defence witness was Doctor Charles E. Tailer, a psychiatrist, who stated that in the past 10 years there has been a change toward liberalization of people's attitudes towards sexuality. On cross-examination, however, he was referred to a passage in the book "Daddy's Playmates" (part of ex. F-16) which describes an act of sodomy between a father and daughter and said:

Q. That's plainly a dissertation of incest, isn't it?

A. Yes.

Q. And you just admitted it is a type of activity which should be stopped.

A. I think it should, yes.

Q. You really think it is helpful to have a publication which shows this sort of thing?

A. I think it should be stopped, same as I think the drug experiment shouldn't go any further because we don't know the long term effects.

Q. Are you saying if one wants to experiment it is alright, but not . . .

A. No. I am saying it shouldn't go to any stage.

It is my opinion, applying the principles set forth in the authorities I have referred to, that the learned Magistrate was not in error in finding that the books in issue were obscene and in consequence the appeal from conviction by both appellants should be dismissed. I would but add that the books in the present case, based on the opinions set forth in the various authorities, conform to the standard formula of hard-core pornography and no matter what standards within Canada are employed they go beyond the Canadian community tolerance level and are obscene under our law."

On the issue of sentence, the Court stated:[10]

"The evidence of Sergeant Wyatt, as mentioned earlier, was that the books that bore prices had a total retail value of $64,883.94. Counsel with the

appellant advised this court that $12,500 represented two years' net profits of the company. The overriding principle of sentence in a case such as this is the protection of the public which can be achieved by deterrence. I feel, however, that a penalty of $7,500 representing as it does more than one year's net profits of the company, would be adequate and I would reduce the fine accordingly."

- *R. v. The MacMillan Company of Canada Ltd.*[11]

The accused corporation was charged with possession of obscene books for the purpose of distribution, contrary to section 159(1)(a) of the *Criminal Code*. The book was entitled "Show Me", and was purportedly designed for use by parents in explaining sex to their children. The book's text was written by a doctor practising in Switzerland; its photography, captions and design were done by an American photographer. The photographs were taken in Munich, and the book was originally published in Germany in 1974. The English language edition was published in New York in 1975. The accused corporation was the Canadian distributor of the book. "Show Me" retailed in Toronto for $14.95 and was packaged in cellophane.

The police seized a number of copies of the book in Toronto, and ascertained that 4,000 copies of the book had been distributed within Ontario, Quebec, Manitoba, Alberta and British Columbia. The Crown Attorney for Toronto threatened the MacMillan Company of Canada with prosecution in the event the book was not withdrawn. The corporation decided nevertheless to continue distributing the book, with consequent complaints from members of the public. It was these complaints which prompted the authorities to prosecute.

That the accused corporation possessed the book for the purposes of distribution was conceded. The sole issues at the trial were whether the book was obscene and, if so, whether the company's possession of the book for the purpose of distribution served the public good within the meaning of section 159(3) of the *Criminal Code*. An appreciation of the book's contents is necessary to an understanding of the legal conclusion reached in the case. Accordingly, the trial Judge's thorough description of the book in his written judgment is extracted below:[12]

'I turn now to a description of the book itself. It is a large 'coffee table' type format, measuring some 9 1/2 x 13 1/2 in. The front dust jacket reveals a photograph of two nude children, boy and girl, ages (I would gather) between six and nine. The inside of the front jacket gives information as to the contents of the book. To set out certain passages:

> [It] . . . is an explicit, thoughtful and affectionate picture book designed to satisfy children's curiosity about sex and sexuality — their own as well as that of their elders. In a series of sixty-nine beautiful double-page photographs, accompanied by a running commentary assembled from actual reactions of children to the photographs, it explains and illustrates sexual development from infancy through adulthood. An illustrated text at the back of the book spells out the educational, ethical and psychological significance of the pictures, and supplies complete information on human reproduction, love, sexuality, sexual experimentation and marriage. This explanatory section, by a noted child psychologist, will help parents discuss with their children the pictures in the earlier part of the book.

The back of the dust jacket contains a brief biography of the authors as well as endorsements of the book by medical and religious notables.

The foreword at pp. 3-4 deserves full quotation:

> We have made this book for children and parents. In their hands it can be an aid to sexual enlightment. But above all we hope it will show parents that natural sexuality develops only when children are surrounded from birth onwards by a loving family and environment which does not repress sexuality. We don't believe a child will have 'found the answer' to sex simply by looking at the pictures in this book. A good understanding requires rather a continuing exchange between parent and child, a dialogue which helps the child express his questions and problems concerning sex and resolve them. The photographic part of this book is meant as a taking-off point for parents. Internal bodily processes such as conception and pregnancy as well as anatomical facts should be presented to the child in simple words by the parents themselves. The text at the end of the book makes suggestions for this purpose. It gives parents basic information on the development of sexuality and sex education. We are of the opinion that only an explicit and realistic presentation of sex can spare children fear and guilt feelings related to sexuality. For this reason we chose photography as a medium. With much care and under great difficulty we succeeded in photographing the children in such a way that their natural behaviour came through. We thank the children and their parents for their help in putting together the photographs. The captions to the pictures are gathered from their spontaneous comments. We hope this book will serve parents and children as a source of information and guide them toward a happy sexuality marked by love, tenderness and responsibility.

There follows 69 double-page photographs, each of which save one depicts human beings wholly naked or their genitalia. The first seven photographs show a boy and a girl, aged (I would gather) between six and nine, discussing their anatomical differences. The next three photographs concern a mother showing tenderness to and breast-feeding her baby, as seen through the eyes of, and discussed by, the aforementioned children. In the next photograph the mother comforts the boy whose world has been invaded by a new baby brother. The next photographs involve another child, aged (I would estimate) between one and two, exploring her mother's breasts, and being held lovingly in the latter's arms. In the ensuing two photographs, the boy who feels resentment to the new intruder holds the baby and comtemplates how he was in his own infancy. This is followed by a child wrestling with his father.

On p. 36 there is shown the external female genitalia, and it contains a pejorative caption with an older male and female person apparently expressing disapproval. In the three photographs subsequent, the vulva, penis and external excretal parts of the body appear, with comments respecting their essential differences, although the common feature of the latter as to boys and girls is stated. As to the latter, the above-mentioned elderly people gaze disapprovingly from the caption.

The picture at p. 44 is merely a full face view of a young girl, aged (I would estimate) between five and six, captioned: "Look what I can see. But I don't want to see it any more."

An erect penis is shown, with a piece of cloth draped over it. And whatever else may be said about the book, I fail to comprehend how its internal necessities are served by this inclusion. There follows penises in the ordinary

state and photographs illustrating the difference between circumcision and the lack thereof, which take up the following double pages.

An inquiry from the boy who appeared at the beginning of the photographic section as to when he will acquire pubic hair and genitals like his father, with relevant pictures, will be found at pp. 52-5; and then a young girl who, I surmise, is the same girl shown full face at p. 44 is shown to be asking what two girls obviously past puberty are doing, as they are hugging one another. This leads into a query as to whether she will have large or small breasts and then culminates in a photograph of a boy, very much in adolescence, with an erection touching the breasts of an adolescent girl, and presumably the same girl holding the same boy's penis, all with appropriate captions.

The young girl whose questions and queries underlay the sequence of photographs that I have just described, then discloses (with accompanying photography) that she would like to have a baby but demurs at the idea of having the boy who appeared in the first seven photographs enter her vagina when they are grown up. Sequentially, she initially demurs at the sight of a couple, again probably aged between 14 and 16, preparing for sexual intercourse, although she finds goodness in the touching which is said to be part of the lovers' world. She then dwells on the topic of female masturbation as it involves her older sister and finds it to be beautiful. The boy then comments on male masturbation as related to him by his older brother, all of which is graphically shown in the photographs.

The penis shown in this section is, although not grossly so, considerably enlarged in size.

At p. 88 a close-up of the introitus and vagina appears, followed by five photographs of preliminary love play between a couple described as the boy's older brother and his girl friend. The photograph at p. 96 in which the girl friend holds the brother's penis is grossly enlarged.

The preliminary love-making series of photographs is accompanied by captions where the elderly man expresses shock and dismay at the activities portrayed, which include an act of fellatio. The elderly man is referred to by the children as "an old crab! And just cause those two are in love and are making out with each other". The children express complete approval not only of the preliminary love-making, but also of the sexual intercourse which follows.

The young girl who expressed a wish to have a baby is reassured by her mother that the couple's sexual intercourse stems from the fact that they are in love, but the girl expresses fear of a penis in her vagina as she earlier had done. Two photographs, one of which would be hopelessly incomprehensible if taken out of context, illustrating a close-up of sexual intercourse then follow, with the mother assuring the girl that sexual intercourse only occurs when people are older. The girl appears content and happy with her mother's explanation.

At p. 118 the elderly man states: "Dreadful, the things they tell children these days".

Nine photographs follow dealing with childbirth, two of which most effectively catch the accompanying pain and four of which equally catch the ensuing happiness of childbirth.

The photographic part of the book ends with the children who appeared at the commencement of the photographic odyssey expressing their wishes to be like their parents — the boy like his father; the girl, her mother.

The textual section of the book by Dr. Fleischhauer-Hardt consists of 28 pages, commencing with how to look at "Show Me" with parents and children. An excerpt from the first page of the explanatory text is indicative of the author's approach. (I am reading from p. 143 of the book.)

> To avoid introducing repressions and new inhibitions regarding sexual matters, the adult should explain the photographs and encourage the child to talk about the feelings they bring about in him.
>
> Parents who feel that the book is good, but hesitate to show it to their seven — or eight-year old, do so almost certainly because they fear they might impart to their children anxieties about their own sexual feelings or behavior patterns. Parents can easily overcome their fear if they go through the book section by section, looking at the photographs slowly and carefully and not showing them all at once to the children. In this way parents will give themselves and their children the opportunity to gain confidence in the material, little by little. The most important parts of this process remain conversation, explanation, openness on the part of adults, and their readiness to answer all of the children's questions.
>
> Sex education and development is then discussed, not in depth but in a manner adequate to alert the parent to the necessity of and to the pitfalls in developing a capacity for love in terms of what the authors call "basic social trust". The text deals with this concept in the spectrum from infancy to late adolescence. The text encourages the exploration by the child of his or her body.
>
> The explanatory text is accompanied by photographic captions. A substantial number of the photographs are reproduced from the pictorial section of the book. However, there are significant additions: a boy with his finger in his anus; an act of cunnilingus; a young child under the legs of two young people. As was the case in the pictorial section, the people shown in this section are all naked. Abundant photographs of male and female genitalia and sexual intercourse are included, as well as photographs conveying a message of family warmth and unity. Masturbatory action, both male and female, is reproduced.
>
> The book contains an appendix, dealing in detail with contraception and to a lesser extent venereal disease. Shorter sections concern homosexuality and sexual behaviour disturbances.

On the last page of the book Will McBride describes the mechanics of the photography, and he writes:

> The models were all friends. Except for the coitus scenes, mothers and fathers of the children were present and helpful during the photographic sessions.
>
> It must be emphasized that in the photographic division of the book, the captions indicate that in many instances the younger children are watching or have had related to them the sex play

of the older boys and girls and young adults; also, in the photographic caption in the text illustrating anal exploration, there may be another person present.'

Expert evidence concerning the book was led by both the Crown and the defence. Experts called by the Crown testified to the effect that the book encouraged voyeurism and incest, and that it made no mention of the postponement of sexual gratification. The book's attitude towards older persons was thought pejorative.The pictures were said to be pornographic and the book was considered to have little educational merit. In one psychiatrist's view, the book's captions were stupid and its text confusing, with little relationship between the text and the photographs. Further, the human models used were thought to have been exploited.

Defence experts testified that the object of the book was sincere, and that the book treated sex directly, honestly and not immorally. The photographs were not erotic, but rather assisted in eliciting legitimate questions about sex. These experts would recommend the book for use by average Canadian parents. They testified that it did not promote promiscuity or permissiveness, and that it assisted children in receiving truthful information about sex. Several experts testified that in their view the book served the public good, by engendering a more enlightened view of sex among adults and by liberating persons from their own guilt sensations and repressed needs. It was contended that the book helped persons sort out their feelings and attitudes, and provided an opportunity for parents to discuss the range of sexual conduct with their children.

The trial Judge held, after an extensive canvass of the evidence and the applicable principles of law, that the book was not obscene, and therefore that it was unnecessary to consider whether the distribution of the book served the public good. In the Court's opinion, the author's purpose was not merely base exploitation, but was a serious attempt to educate and assist children and their parents in the realities of human sexuality. Although the book undoubtedly exploited sex, such exploitation, in light of the author's evident purpose, the internal necessities of the book itself, and the contemporary Canadian standard of tolerance, was not undue. Although the privacy of the models was invaded in the preparation of the book, this was done with their consent and, in the case of the child models, with the consent of their parents. Several of the photographs, if taken in isolation, would constitute obscene productions, but in light of the internal necessities of the book it could not be said that their inclusion was unwarranted.

Other features of the book which the Crown relied on as proof of obscenity, such as the testimony that some of the pictures, if not properly explained, might frighten children, and the disparaging treatment of older persons, were not relevant to the issue of obscenity. Moreover, the evidence did not support the proposition that the book encouraged incest, masturbation, voyeurism or instant sexual gratification. Finally, the book did not exceed contemporary community standards of tolerance. The evidence supported the view that the Canadian community would tolerate the use of the book by parents wishing to develop their children's sexuality with its assistance, and within the context of family responsibility and morality advocated by the book. The trial Judge stated:[1]

> 'If the book were intended to be and was viewed by children without guidance and explanation from their parents, the book would, in my judgment, seriously offend contemporary community standards in this country. That is not the intention of the authors, and I doubt very much that the packaging and pricing

> of the book would permit it to fall into the hands of children, save through the agency of their parents.'
>
> Accordingly, the accused corporation was acquitted of the charge of possessing obscene books for the purpose of distribution.

The Committee's conclusions concerning the commercial distribution of child pornography in Canada parallel those reached in relation to the commercial production of child pornography. On the basis of the evidence available, the Committee concludes that there is virtually no commercial distribution of these materials and that enforcement services are now effectively and efficiently controlling this problem.

In reaching this conclusion, the Committee recognizes that in some quarters there is the belief that child pornography is widely available across Canada. This perception appears to be fostered by two types of matter which are on occasion exhibited at public meetings and by the titles of some magazines which can be considered to be "pseudo child pornography" which are available in some retail outlets across the country.

At meetings convened to consider these issues, two types of matter are typically exhibited. First, certain sexually explicit depictions of children seized from individuals by the police may be exhibited. Without exception, to the Committee's knowledge, these exhibited commercially produced items have come from abroad and have been seized, when imported, or they have been obtained as a result of subsequent police investigation. Other exhibited materials, those not commercially produced, have come from the seized private collections of pornographers.

The second type of pornographic material which may be exhibited can be classified as "pseudo child pornography". In material of this kind, adult models are presented in such a way as to make them appear to be children or youths. Models used in such publications are chosen for their youthful appearance (e.g., in females, slim build and small breasts); they are presented with various accoutrements designed to enhance the illusion of immaturity (e.g., hair in ponytails or ringlets, toys, teddy bears, etc.). One magazine examined by the Committee referred to one of its models as "the Shirley Temple of smut". The National Accessibility Survey uncovered 15 magazines being sold in various parts of Canada, classifiable as "pseudo child pornography"; their titles were: Babe; Baby Face; Bad Girl; Baby Dolls; Creamy Virgins; Dominated and Diapered; Dollhouse; Nymphet; Over Daddy's Knee; Teens, Tits and Twats; Tiny Cunts; Young Wet Pussies; Young Stuff; Young and Lonely; and Young and Silky.

"Pseudo child pornography" is of concern since it may appeal to the same tastes and may evoke responses similar or identical to those elicited by true child pornography. However, it is distinct from, and is not 'geniune' child pornography in the sense that it is older adolescents or adults who are displayed in sexually explicit depictions, namely, it is not individual children who have been directly exploited in the making of such materials.

In searching for instances involving the production and circulation of child pornography in Canada, the Committee learned that the two main sources of these materials came from:

1. The importation of child pornography from other countries, largely by means of matter carried or smuggled across the border by means of the postal system.
2. Individual production or small group exchanges of child pornography.

These two sources of child pornography are documented in the next two parts of this chapter.

Importation

The best information available to the Committee indicates that any commercially produced pornography found in Canada is of foreign origin and has been imported illegally. (This, of course, excludes non-pornographic youth-oriented publications; it was learned, for instance, that one bookshop catering primarily to Toronto's homosexual community routinely stocks a Boy Scout magazine produced in Quebec.) According to local police departments, the R.C.M.P., Revenue Canada Customs and Excise, various American enforcement authorities and some persons purchasing child pornography who were consulted, the primary importation techniques employed are mailing and personal smuggling (i.e., carrying the material across the border in luggage or on the person). Information based on seizures made by R.C.M.P. Customs and Excise and Revenue Canada Customs and Excise suggest that foreign large-scale commercial production and distribution of child pornography seems to be more or less restricted to three media: magazines, films and individual photographs; the seizure of these materials (see Chapter 51) further confirms that these three media are the ones most often chosen by consumers of child pornography for purposes of importation.

The following case studies illustrate the range of smuggling techniques used by persons illegally seeking to bring child pornography into Canada.

- *37 year-old male.*

In November, 1979, U.S. Customs informed Project "P" that German customs had broken up a pornography distribution ring and had identified a Canadian as a major purchaser of child pornography. The accused, a 37 year-old male residing in a small Ontario town, received the material at a post office box in Buffalo, New York.

A search of the accused's residence uncovered large quantities of child pornography, including books, magazines and 8-millimetre film; this material was seized, as well as a diary belonging to the accused.

The accused had been a public school teacher (and at times, a school principal) for over 15 years. Police also learned that the accused obtained child pornography from three European suppliers and that he received the material under an assumed name. The accused made several trips to Europe when United States authorities began actively prosecuting child pornography

distributors; in Europe, the accused mailed the material back to his Buffalo post office box. The accused visited the box from time to time, emptied it of its contents and then smuggled the pornography into Canada in the trunk of his car.

The diary revealed that the accused had taken valium while at school, that he often watched his pupils to catch a glimpse of their buttocks and genitals, that he tried to provoke sexual conversations in class, that he derived pleasure from any chance touching of his students and that he sometimes masturbated in his classroom while watching his students at recess.

Since there was no evidence of distribution, R.C.M.P. Customs and Excise charged the accused with possession of illegally imported goods with a value greater than $200 (section 205(3) of the *Customs Act*). The estimated value of the seized material was over $4000. The accused was also charged under the *Narcotics Control Act*. The police were unable to uncover evidence that the man had indecently assaulted his students or any other person.

The accused was temporarily reassigned to an administrative post in another city.

The accused pleaded guilty to both charges and was fined $800 on the *Customs Act* charge and $40 on the *Narcotics Control Act* charge. The seized items of child pornography entered as exhibits at trial were forfeited to the Crown, while the items not so entered were returned to the accused upon expiration of the appeal period.

- *Male about 50 years-old.*

In 1977, Project "P" received notification that Revenue Canada Customs and Excise had seized a large quantity of child pornography, including the addresses and nude photographs of about 2500 children. The material was seized from a male in his mid-twenties who stated that he was returning to Canada from Florida, and that his father (the suspect) had requested him to deliver the items to a Toronto address. The suspect was about 50 years of age, married and also had a daughter. Police learned that the suspect had an extensive criminal record in four countries, stretching over a 20 year period and consisting in large part of sexual offences against children.

The address to which the suspect's son was to have delivered the pornography was discovered to be that of a mailing service retained by a company owned by the suspect. In the judgment of Project "P" officers, the suspect was a major distributor of child pornographic films and slides, and was attempting to transfer his business operations to Canada, when the load of material carried by his son was discovered at the border. Revenue Canada retained the material, but no further action was taken against the suspect at that time. The woman who operated the mailing service was not regarded by police as being culpable since she refused to have anything to do with the suspect once she discovered the nature of his business; accordingly, no charges were laid against the woman or her business.

Later that year (1977), the suspect again came to the attention of law enforcers, when an American citizen complained to the United States Postal Service that he had not received colour slides of young girls that he had ordered from several addresses. One of these addresses was that of the mailing company already mentioned. The aggrieved customer had seen an advertisement placed by the suspect in a photographic journal; the advertisement showed a young nude girl wearing her hair in a pony tail, sitting on her buttocks, and curled into a foetal position, with her knees touching her forehead

(so that neither genitals nor breasts were visible). The United States Postal Service notified Canada Post concerning the matter.

The material handled by the accused consisted of thousands of slides of young, nude girls and boys, either posing alone or with other children, pamphlets and newsletters, including a "child's bill of rights" propounding that every child has the right to engage in sexual activity and that those who oppose pedophilia have deprived children of this right.

Project "P" was informed by the Los Angeles Police Department that the suspect had absconded from a Florida mental institution in 1976. In 1978, the Los Angeles Police Department notified Project "P" that the suspect was awaiting a bail hearing in California and requested information concerning his previous criminal activities inside Canada. The Los Angeles police were seeking to have the accused committed as an habitual sex offender. The suspect is now serving a 25 year prison term in Florida.

- *Male in mid-thirties.*

In 1982, R.C.M.P. Customs and Excise seized mail addressed to the suspect, a male in his mid-thirties. The R.C.M.P. informed Project "P" that the suspect might be a postal recipient of "hardcore" homosexual child pornography. Project "P" 's investigations revealed that the accused had a criminal record from the 1970s for offences including contributing to juvenile delinquency (by taking nude photographs of two, nine year-old boys) and two charges of indecently assaulting a male.

When they searched the accused's residence, Project "P" and R.C.M.P. officers discovered and seized large numbers of homosexual, child pornography magazines and photographs of nine male youths (who, subsequently, were identified). In addition, the investigating officers discovered several application forms for employment as a youth counsellor; the suspect had not actually applied for the posts, but evidently had some interest in them. At the time of the search, the suspect also admitted that he subscribed to two child pornography-oriented publications.

The investigating officers advised the suspect to seek psychiatric assistance. The individual stated that he would comply with this advice, and subsequently notified the R.C.M.P. that he was receiving treatment twice weekly from a medical doctor.

The Police Youth Bureau was assigned the task of determining whether the nine boys appearing in the suspect's photographs had been indecently assaulted. No charges were laid.

The mails are an attractive avenue of importation for the would-be consumer of child pornography. First, the case studies presented in this section of the Report indicate that persons who purchase material of this kind are anxious to avoid detection. The consumer of child pornography's apprehensiveness of being discovered is essentially the fear of facing humiliation, social ostracism, and possibly, criminal charges for any sexual acts that he may have committed with children. A taste for child pornography is one satisfied only at considerable expense. A review of child pornography seizures held at the offices of Project "P" revealed that individual black and white photographs sold for at least $1.00, while small (5" x 7", 20-40 page) magazines varied in price from $10 to $50 apiece. Films and videocassettes sold for considerably higher prices.[14] Thus, the consumer of child pornography must also possess a powerful

economic motivation to take whatever steps are necessary to prevent the detection and seizure of any such material that he has ordered.

The postal system is, by its very nature, so constituted as to afford importers the opportunity to obtain child pornography while shielding their identities; it is this fact that likely accounts for the popularity of the mails as a conduit for the importation of sexually explicit depictions of children. The Committee learned of the following methods used either by subscribers or foreign distributors to avoid detection:

1. The use of pseudonyms by subscribers when placing orders.
2. The use of post office boxes by subscribers for the receipt of material ordered.
3. The concealment of child pornography in various packages, as well as in rolled-up newspapers and larger publications. The Committee learned of one incident in which Customs inspectors discovered a reel of film hidden in a cake mix box.
4. The re-routing of child pornography through other countries. Since Customs inspectors are most likely to be suspicious of packages sent from certain countries, distributors in these nations often re-route their products through seemingly more innocuous countries before final shipment to the customers.

One device used by the large-scale producers of child pornography is the subscriber mailing list. Lists of this kind are compiled by professional brokers. The lists are sold to companies catering to specialized classes of persons such as stamp collectors, scout masters, doctors and purchasers of various products. Some brokers specialize in providing lists of consumers who have purchased sexually oriented material. Depending on their size and quality, the lists may sell for thousands of dollars. After one company is through using a list, having developed a shorter but more comprehensive list of good customers, it may sell the original list to another company. Thus, any number of companies may have the same mailing lists. The utilization of mass-marketing devices such as professionally prepared customer lists indicates that American and European child pornography operations are sophisticated and lucrative concerns.

Another tactic used by mail order companies is to advertise the sale of relatively "soft core" material in newspapers, magazines and books. The names of purchasers of this material are then incorporated in mailing lists, and such persons are likely to become primary targets for advertisements for the sale of "hard core" and child pornography. In Chapter 53, the *Contents of Pornography*, a description is given of some of the advertisements placed in adult sex magazines having the widest circulation in Canada. The addresses from which these materials may be obtained are almost invariably located in other countries and indicate that the materials ordered will be sent to the purchaser in 'plain wrapping', 'a plain sealed envelope', or 'sent with discretion'.

Travel affords individuals the opportunity to purchase child pornography in parts of the world where such material is readily available and to smuggle

this type of merchandise into the country. Foreign visits not only facilitate personal smuggling, but can also be used to develop new channels of postal importation. Personal visits may facilitate the making of new contacts in other countries with persons willing to exchange photographs through the mail. In some instances, child pornography users have obtained post office boxes in United States border cities. These purchasers have had child pornography sent to their post office boxes; periodically, they have visited the given border city, emptied the boxes and carried the child pornography back with them into Canada. In other instances, the authorities have intercepted mail indicating that packages containing child pornography have been sent from abroad to be received by the sender.[15] The perceived advantage of the latter technique (from the customer's standpoint) may be that mailing pornography to his home address while travelling, creates less risk of detection and embarrassment than does actually carrying the material over the border.

As noted in Chapter 51, *Importation and Seizure*, **the Committee recognizes that there is no fool-proof system of preventing the importation of child pornography either by means of personal or postal smuggling. The Committee believes, however, that considerably stronger effort is warranted than occurs at present by Canadian services to work in co-operation with the enforcement services in other nations which may have knowledge of child pornography distribution rings, that more effective identification procedures are required relative to the identification of matter coming through the postal system, and that information from both of these sources should be efficiently maintained on a central computerized basis for purposes of identification and follow-up of known buyers of child pornography.**

The precedent already exists for each of these enforcement practices, but in each instance, their application needs to be sharply extended and placed on a more uniform and comprehensive basis. In this respect, there is no doubt that Canadians wish to have child pornography totally prohibited from coming into or being distributed in Canada on any basis — commercially or by means of informal exchanges. The strengthening of the existing enforcement practices recommended by the Committee, while not ensuring the absolute elimination of child pornography in Canada, would make its importation and distribution more difficult and would facilitate the identification and follow-up of known instances involving persons possessing child pornography.

Non-commercial Production

In addition to importation, the Committee identified that the second and likely less extensive source of child pornography in Canada was the production for private use of these materials. On the basis of the findings of several of the national surveys and case studies assembled from police records and sentencing decisions, it appears that many of these reported instances involved the taking of individual photographs, apparently for personal use rather than commercial

purposes. The numbers of photographs seized in cases known to the police ranged from a few to almost 12,000.

National Population Survey

A total of 10 persons in this nationally representative sample of Canadians reported that they had been subjects of sexually explicit depictions. Situations of this kind had occurred equally to both males (5) and females (5) and half of the respondents stated that they were children when they had been the subjects of these depictions. The ages reported when the incidents had occurred were: 9 year-old female; 11 year-old male and 11 year-old female; 14 year-old male; and a 15 year-old female. There were also four instances in which persons reported that members of their families or close friends had been subjects of such depictions when they were children. In two cases, the pictures taken had been used as a means of blackmailing the person involved.

At face value, the number of persons involved in these incidents is small. However, it is recalled that the findings were derived from a representative sample of the population, and to the extent that they are reliable, if the proportion found in the sample is prorated to the population, then it may be the case that over 60,000 Canadians, when they were children, may have been the subjects of sexually explicit depictions.

On the basis of the findings of this and other national surveys and the review of reported case law, there can be no doubt that incidents of this kind occur in Canada, in some instances, involving very young children. Taken together, the findings from the several research sources suggest that the reported prevalence of about one in 400 persons (1:401.6) having been the subject of a sexually explicit depiction as a child is likely an under-estimate of the actual occurrence of acts of this kind committed against children.

National Corrections Survey

Information in the correctional records of 695 convicted male child sexual offenders indicated that one in 29 (3.4 per cent) was reported to have taken sexually explicit pictures of victims. These incidents varied in relation to the types of sexual offences committed, respectively involving 9.5 per cent of the victims of offenders having multiple victims, 7.0 per cent of the victims of homosexual offenders and 2.4 per cent of the victims of heterosexual offenders.

National Juvenile Prostitution Survey

The survey's findings indicate that juvenile prostitutes are a high risk group in regard to being exploited by pornographers. Of the 229 youths who gave personal accounts to the Committee, about three in five (57.6 per cent)

said that they had been asked at least once by clients to be the subjects of sexually explicit depictions. These requests had been made about equally to both young male (58.3 per cent) and female (57.2 per cent) prostitutes. However, proportionately more males (20.2 per cent) than females (12.4 per cent) said that they had actually been involved in the making of these depictions.

The types of sexually explicit depictions taken of juvenile prostitutes included: posing nude with only the client present (19); performing homosexual or lesbian acts (4); being filmed while engaged in sexual intercourse (3), having intercourse with a dog (2) and performing sado-masochistic acts (2); pictures taken at male stag parties (3); and other (2), including a mould of a penis made by a "sculptor" and participating in the making of a pornographic film.

From the findings of the three national surveys and the case studies given below, the picture of the Canadian child pornography producer emerges as that of a male who photographs or films children as a means of obtaining sexual gratification. Persons who make child pornography often amass substantial private collections of the material. Often, though not always, the children depicted are those with whom the pornographer has had (or is having) sexual encounters. The following case studies illustrate the types of situations in which child pornography is typically produced in Canada.

Case Studies

- *50 year-old male.*

Police began an investigation of the accused upon receiving a complaint from a mother who had found three nude photographs of her 14 year-old daughter in her home. The accused, a 50 year-old male, first met the mother and daughter when the child was 12 years of age. At that time, the accused obtained the mother's permission to photograph the girl. During the initial sessions, the child was fully clothed, but at subsequent sessions semi-nude photographs were taken, and by the time the daughter had reached her thirteenth birthday, she had been persuaded to pose fully nude. During some of the later sessions, the accused fondled the girl's breasts and crotch. Occasionally, the accused had the child photograph herself in the nude with the aid of a timed shutter release.

Once the mother's complaint had been received, the police conducted a search of the accused's residence and found thousands of photographs. A 16 year-old girl was also found in the house. This girl was depicted performing various sexual acts with the accused in many of the photographs seized.

The police learned that the accused was involved in boxing programs sponsored by a local Boys' and Girls' Club. Through these volunteer activities, the accused had cultivated the friendship of a number of young females, between the ages of 12 and 17, whom he gradually persuaded to pose nude, semi-nude and in sexually suggestive poses. The accused had had consensual sex with several of the girls who were between the ages of 14 and 16; he also had sexually assaulted two 14 year-old girls and had performed cunnilingus on one of them.

The police charged the accused with two counts of indecently assaulting a female, one count of making obscene pictures, and two counts of contributing to juvenile delinquency (section 33 of the *Juvenile Delinquents Act*). After pleading guilty to the charge of making obscene pictures and to one count of indecently assaulting a female, the accused was placed on two years' probation.

- *53 year-old male.*

The accused, a 53 year-old male, was the town photographer in a small community, and as such, photographed all local functions, sporting events and took the school pictures and individual portraits, but also photographs of young girls in gym and cheerleader outfits.

On occasion, the accused would invite young girls to come to his home (with parental permission) to have their photographs taken. The children always remained clothed during these sessions, and many of the photographs taken were of an innocent nature; for other shots, however, the accused would instruct the children to bend over, lie down, raise one leg or place themselves in other positions that would expose their panties or bottoms. (The genital area was the centre of attention in many of these photographs. The subjects of these photographs were between seven and 12 years of age). The accused gave the ordinary portraits to the parents and retained the "special" shots for his own use. He enlarged some of the photographs to 11" x 17". If the girl portrayed was older than 12, the accused would cut out a picture of a younger face and paste it over the older one. The accused also pasted pictures of children's faces onto pictures of adult nude women.

The accused came to the attention of the police when he sent an exposed roll of film by mail to a photographic laboratory for processing. The laboratory, in turn, contacted the police. Upon searching the accused's premises, police officers found hundreds of photographs of young girls with their panties exposed. In addition, there were thousands of photographs taken at school gymnasia, in which were pictured girls bent over, or in other revealing poses. The groin area was the constant centre of attention in these shots.

The accused was charged with one count of mailing obscene matter (section 164 of the *Code*) in connection with the roll of film that he sent to the laboratory. A charge of indecent assault on a female was eventually withdrawn. After a 30 day psychiatric assessment, the accused pleaded guilty and was placed on probation for one year, subject to the proviso that he did not photograph children unless they were under the supervision of a person at least 21 years of age.

- *Husband and Wife.*

The accused, a 35 year-old freelance photographer who worked at night as a janitor, gained access to children by serving as a volunteer in the Big Brothers Organization. The accused lived with his 29 year-old wife (the co-accused) and his three children, ranging from three to nine years of age. The complainant, a 14 year-old "little brother" of the accused, stayed at the accused's home on weekends. The youth was first persuaded to shower with the accused; eventually the relationship progressed to the point where the two would engage in acts of mutual fellatio. The wife encouraged this relationship, was always present when her husband and the boy had sex and, on occasion, would engage in sexual intercourse with the youth while her husband buggered him. The boy was then used to recruit other young boys for the couple. The couple performed various sex acts with the other boys, whose ages ranged from 10 to 16.

On many occasions, the accused and co-accused photographed their sexual activities with young boys.

A small proportion of the photographs was discovered by police when they searched the couple's home. Police investigations also revealed that the accused had invited Boy Scouts to his home, whereupon he showed them pornographic material and made sexual advances to them.

Police speculate that the couple may have received some form of advance warning of the impending search and that this would explain the absence of most of the photographs from their home. The charges laid against the two accused were as follows:

Charge	Husband	Wife
Buggery	two counts	one count
Indecent assault on a male	one count	
Gross Indecency	six counts	three counts
Contributing to Juvenile Delinquency	one count	

The male accused received concurrent sentences of four years for each buggery count and one year for one count of gross indecency. The female accused was given a two year suspended sentence which, on appeal by the Crown, was increased to 18 months' imprisonment.

- *21 year-old male.*

The accused, a 21 year-old probation officer working with a youth group, became involved sexually with an 11 year-old boy under his supervision. The accused took nude photographs of the boy and submitted the film to a commercial laboratory for processing, whereupon the laboratory contacted the police. A search revealed more photographs indicating that the accused had been involved sexually with other male youths. The accused admitted to having fellated the 11 year-old male at a summer camp. The accused also admitted to police that he was a homosexual and stated that he had been receiving psychiatric assessment and treatment for years. After his arrest, the accused was released in the custody of his father, under strict conditions, including the stipulation that he not associate with persons under 16 except in their parents' presence. He was charged with indecently assaulting a male.

- *30 year-old male.*

The accused, a 30 year-old ship's cook, travelled regularly between Halifax and St. John's over the two year period of his employment. In June, 1978, on the St. John's stopover of one such trip, the accused invited nine youths (sexes not specified) to his hotel room. Here, the youths participated in a photographic session in exchange of between $10 and $15 each. The photographs taken showed the youths in nude and semi-nude poses, and included shots depicting acts of fellatio and buggery. The number of youths appearing in each photograph ranged from one to four.

The police began their investigation of this case when the mother of a 12 year-old boy reported her suspicion that her son had been photographed in the nude by the accused. Statements obtained from the nine juveniles revealed that the accused had carried on his photographic activities over a

two year period, and that some of the youths had been used as models repeatedly during that span of time. One of the youths had been photographed on between 10 and 15 occasions, and had received as much as $500 over the two year period. Some of the juveniles had also been used to recruit others to participate in the accused's photo sessions.

The accused was charged with one count of "counselling an act of gross indecency" and three counts of contributing to the delinquency of juveniles under *Newfoundland's Welfare of Children Act*. The accused pleaded guilty to the "counselling" charge, upon which the three less serious, charges were withdrawn; he was sentenced to four years' imprisonment.

- *53 year-old male.*

The accused, a 53 year-old male, came to be known locally as "The Candy Man" because of his practice of asking young girls to visit him at his home in exchange for candy and money. The girls lured into the accused's home were shown pornographic magazines, in order to lower their inhibitions. The girls were then induced to engage in sex acts with each other and with the accused. The accused took nude and semi-nude photographs of the victims while they were performing these acts. In some instances, the girls fellated the "Candy Man". None of the victims was older than 15, and most were between the ages of 10 and 12. In investigating the case, the police executed a search warrant on the accused's home, and seized drugs, some of the photographs of the girls and pornographic magazines.

"The Candy Man" was charged with four counts of indecent assault on a female and five counts of gross indecency. No charges were laid in connection with the accused's photographic activities.

- *Two Males.*

In 1981, the police were notified by a photographic laboratory that an individual had submitted a roll of colour film for processing which, when developed, had yielded photographs depicting sex acts between a child and an adult. From 13 impugned photographs, the following depictions were noted: the erect penis of a reclining adult male; an adult male with genitals exposed and pants pulled down to his knees; a naked 11 year-old boy sitting with the penis of a naked, standing adult male resting on his head; acts of fellatio and buggery involving two adult males; an adult male holding his own penis and that of another adult male; and a naked boy holding the penis of an adult male.

A search was conducted at the residence of the person who picked up the photographs from the laboratory. This person, the first accused, was taken into custody; he identified the child as well as the second adult appearing in the photographs (the second accused).

The first accused stated that he had known the victim and his parents for some time. According to the first accused, he had taken some of the photographs himself and the child had taken others. He denied having engaged in sexual acts with the child at the time of the photographic sessions, but admitted that the boy had licked his penis on other occasions. The first accused further admitted having been questioned and released by police after several other children had complained of his having had sex with them.

The child's statement indicates that he took four of the photographs. While no violence was used against the boy to obtain his compliance, one police report notes that the child resisted participating in the photographic sessions.

Police files disclosed that a number of previous complaints had been lodged against the accused for alleged sexual involvement with children. The earliest of these complaints was made when the first accused was 16 years-old.

Both accused were charged with counts of gross indecency, buggery and indecent assault on a male, while the first accused was also charged with gross indecency with respect to his involvement with the child. In addition, charges of making obscene matter and contributing to juvenile delinquency were laid, but were later withdrawn. The first accused was released on his own recognizance subject to the condition that he not associate with juveniles.

At trial before a county court judge, both accused pleaded guilty to all charges. The second accused, who was found not to have instigated the commission of the offences, received a four month reformatory term. The first accused had yet to be sentenced when this information was collected, and was undergoing psychiatric treatment.

The victim apparently received counselling and psychological help following the incidents described above. The boy's father testified at trial that his son had become the subject of ridicule by his peers at school and by his sister, once the facts of this case became known locally.

- *19 year-old male.*

The accused, a 19 year-old male, submitted a roll of film to a commercial laboratory for processing. When developed, the film yielded photographs of two young girls, apparently 11 or 12 years of age. The girls were pictured in states of full and partial nudity, and in one shot, one of them appeared to be masturbating herself. The laboratory notified the police who, in turn, visited a number of local schools and succeeded in identifying one of the girls portrayed in the photographs. The girl was enrolled in a class for slow learners. This identification precipitated the search on the accused's residence.

The accused occupied the basement of a house in the upstairs portion of which resided a woman separated from her husband and her four children, two girls five and nine years-old, and two boys, eight and 10 years of age. The search uncovered nude and semi-nude photographs of these children. The accused admitted having sexually assaulted all four children, and was charged with two counts of indecently assaulting a female, two counts of indecently assaulting a male and one count of contributing to juvenile delinquency (section 33 of the *Juvenile Delinquents Act*).

- *62 year-old male.*

The accused, a 62-year old man with no previous criminal record, used glue and contact cement cleaner as an item of barter between himself and the numerous female children with whom he became sexually involved. The children befriended by the accused were between the ages of nine and 16; many were runaways and came from families with histories of alcoholism.

When the accused's residence was searched by the police, a 13 year-old runaway girl was discovered in the accused's bedroom. The girl stated that, since the age of 12, she had had sexual intercourse with the accused on four or five occasions, either in exchange for glue or for money (the amount paid by the accused was $2.00 on these occasions). The police also found several full and empty cans of contact cement cleaner, vasoline, one rubber glove, rubber vibrators and 30 polaroid photographs of nude and semi-nude females, all of whom appeared to be under 16 years of age. In one of these photographs, an apparent act of cunnilingus was depicted.

Police investigators revealed that over a two year period, the accused had used as many as 16 female children for his sexual gratification. The accused was charged with six counts of having sexual intercourse with females under the age of 14, pleaded guilty to two of these counts and was sentenced to six months' imprisonment.

- *29 year-old male.*

The accused, a 29-year old university professor, gained access to children through his volunteer work as a group leader for a boy's club and as a supervisor at a school youth reading program. Seven victims of the accused were identified, all males between the ages of eight and 15. Most of the boys came from "broken homes" in which there were no male parental figures. Boys befriended by the accused were invited to his apartment where they were given food, candy and liquor as a means of gaining their trust and lowering their inhibitions. The accused then showed the boys pornographic films depicting acts of homosexuality, bestiality and sex between male children. The boys, often inebriated by this time, were asked to undress and to perform sex acts with the accused and with each other. These activities were photographed by the accused.

When the police searched the accused's apartment, they discovered about 50 reels of 8 millimetre film, books, magazines and 15 photo albums containing more than 400 photographs. All of this material featured depictions of children. The acts portrayed in the photographs included buggery, fellatio, masturbation and oral-anal sex.

The accused was charged with one count of indecent assault on a male and three counts of gross indecency. At trial, the accused was found guilty on all charges and was sentenced to two years less a day. He also received a concurrent sentence of 18 months to be served at a psychiatric facility.

- *Husband and Wife.*

The police occurrence form states that in 1977, the accused husband and wife invited a 13 year-old male into their apartment, and performed various sex acts in his presence. The boy was then undressed by the accused woman and induced to have sexual intercourse with her while her husband watched. A few days thereafter, the same boy returned to the accused's apartment accompanied by another 13 year-old male; on this occasion, the accused engaged in sex acts with both of these boys. The two juveniles were given alcohol and marijuana. The accused male offered the boys "a substantial sum of money" to pose (for photographs) while engaging in sex acts.

Police investigations of the case led to the seizure of a number of pornographic films of men and women, as well as photographs of males and females engaging in various sexual activities; several of the photographs depicted the female accused having sexual intercourse with a dog. When interviewed, the female accused admitted that she had posed for the latter group of photographs and that the male accused had taken the pictures.

- *Re Hawkshaw and The Queen.*[15]

In October, 1980, Project "P" was notified by a commercial film processing laboratory that it had received a roll of film which, when developed, contained obscene photographs. In one of the photographs, an adult male was shown fellating a 17 year-old male while another youth looked on. The accused, who had submitted the film, was identified from the envelope in which the film had been received. The accused was a male civil servant about

60 years of age. Project "P" executed a search warrant on the film laboratory's retail outlet and seized 25 photographs from the roll of film in question. Although the accused appeared in several of these photographs, he was not a subject in the "fellatio photograph."

Project "P" executed a search warrant against the accused's rural residence, which was identified as the location where the fellatio photograph had been shot. The following items were seized as a result of this search: 48 photo albums, loose photographs, fifty 8 millimetre films, a box of negatives, an address book, notebooks, correspondence and two cancelled cheques. The accused admitted that he owned the camera used to take the fellatio photograph, but denied having taken the picture or having been present when it was taken. He identified the participants in the photographs and stated that they had been weekend visitors at his home.

This information prompted a search by Project "P" of the residence of the co-accused, who was the adult male depicted fellating the male youth. The shirt worn by the co-accused in the photograph was seized. The co-accused admitted that he was one of the persons photographed, but denied that an act of fellatio had actually occurred. The impugned photograph, he protested, was taken from a bad angle and was misleading. He also identified the male youth alleged to have been fellated ("the victim").

According to a person interviewed by Project "P" (who was the brother of a person found in the accused's residence when it was searched), the victim had been drinking heavily on the occasion when the photograph was taken. This person stated that the accused had taken the fellatio photograph.

The victim, a 17 year-old male, admitted to having gone to the accused's residence for the weekend and confirmed (after initial denials) that an act of fellatio had taken place. He also admitted to having consumed a large quantity of alcohol — enough to make him vomit — and stated that the accused had taken the fellatio photograph.

The co-accused was charged with gross indecency under section 157 of the *Criminal Code*. He pleaded guilty at trial and was sentenced to a fine of $1,000 or, in default of payment, to two months in jail.

The accused Hawkshaw was charged with making an obscene photograph under section 159(1)(a) of the *Criminal Code*. The preliminary inquiry was beset with irregularities. Two of the Crown witnesses, apparently including the victim, gave testimony which conflicted with their earlier written statements to the police. Both witnesses (who were friends of the accused and the co-accused) were later charged with perjury, but the charge against the victim was withdrawn. One of the persons present at the accused's residence when it was searched was charged with obstructing justice, apparently for exhorting the victim, in the form of a threat, not to give evidence against the co-accused.

The accused was committed for trial on the section 159(1)(a) charge, but his committal for trial was set aside in a higher court. Mr. Justice Osler, in quashing the accused's committal for trial, held that on a charge of "making" obscene photographs under section 159(1)(a), to publish or to intend to publish the photograph is an essential element of the offence.[1]

The Crown successfully appealed from this ruling. The Ontario Court of Appeal held that publication or intended publication is not an element of the offence in section 159(1)(a) of making an obscene photograph and that the accused should accordingly be committed for trial on that charge. The word

"makes" in section 159(1)(a) is very broad and may encompass a single act of creation, whether or not publication is contemplated:[19]

> "[Section] 159(1)(a) is quite explicit, and Parliament intended it to be an offence to make or to print an obscene picture, even though it might not be made for the purpose of publication or was not made known to the public.
>
> It seems reasonable to conclude that Parliament considered that the protection of the social interests threatened by the dissemination of obscene material could be most effectively accomplished by proscribing altogether the bringing of the offensive material into existence."

The Court further held that there was no justification for applying a different test of obscenity for offences involving "publications" and matters which were not "publications", and therefore, that the definition of obscenity in section 159(8) should apply to all obscenity-related prosecutions.

On the issue of whether the photograph should be considered obscene, the Court stated:[20]

> "It will have to be decided at trial, on the basis of all the evidence, whether a dominant characteristic of the photograph is an undue exploitation of sex. In determining what is undue exploitation of sex within section 159(8), the test to be applied is whether the accepted standards of tolerance in the contemporary Canadian community have been exceeded. This is a matter to be determined by the trial Judge in an objective way after considering the relevant evidence . . . The fact that the picture was intended solely for private viewing and was not intended to, and did not come into anyone's hands, other than those of the person who took the picture and the commercial establishment which developed it, may be very relevant in considering what the Canadian community would tolerate. A sketch or a model which is the product of the author's imagination and is only intended to be viewed privately might not be found by the trial Judge to constitute an undue exploitation of sex. On the other hand, he might be driven to conclude that the community would not tolerate, even for private viewing, a photograph depicting the commission of an act of gross indecency where one of the participants is a minor. In short, publication is not a prerequisite to a determination that a picture is obscene, but it is a relevant circumstance to be weighed in making this determination."

• *R. v. E. and F.*[21]

In 1979, a commercial film processing laboratory in Toronto notified Project "P" concerning a film submitted for processing at one of the firm's retail outlets in a small Ontario city. The film had been submitted by the female who was later accused, Mrs. E. Photographs processed from the film depicted a man, a woman and a young girl about 10 years-old. All three persons had been photographed in the nude, and some of the pictures of the young girl were clearly sexually suggestive. For example, in one photograph, the young girl posed nude with her legs spread widely apart.

The police interviewed the female accused, who was a 35 year-old divorcee with no prior criminal record. She lived with her common law spouse, Mr. F., and with two children from her former marriage, a 15 year-old boy and an

11 year-old girl. The male accused, Mr. F., was about 30 years-old, and was also divorced. He had co-habited with Mrs. E. for about eight years.

When the police showed them the photographs, the two accused identified the persons portrayed therein as themselves and the 11 year-old girl. They stated that they did not consider the photographs to be objectionable, since they were nudists and intended to raise the girl in the nudist lifestyle. Further, they claimed that the pictures of the girl had been taken for posterity. The two accused also showed the police photographs from their family album. Several of these photographs depicted the male and female accused, and the girl, in the nude.

In this initial investigation, no charges were laid because the photographs had been made exclusively for family perusal rather than for distribution or sale. The photographs were returned to the accused with the stipulation that no further nude pictures of the young girl should be taken.

About two months later, Project "P" was informed by a local police force that a film processing laboratory had reported receiving film containing depictions of a young girl in sexually suggestive poses. The name on the envelope in which the film was submitted was that of one of the accused.

A warrant was obtained and a search conducted at the accused's residence. Approximately 400 photographs and negatives were seized. The accused were charged jointly with engaging in sexual immorality in the home of a child, and thereby endangering the morals of the child contrary to section 168 of the *Criminal Code*. As required by section 168, the Attorney General's consent to the prosecution was obtained. Charges for the making of obscene pictures under section 159(1)(a) of the *Code* were not laid because it was doubtful whether the photographs seized satisfied the legal test of obscenity.

Among the exhibits entered at trial were photographs of the girl in numerous poses, some totally nude, and others, semi-nude (e.g., in boots, "provocative" negligees, high heels or with an umbrella). In another photograph, the nude girl was seated between her mother's legs with her own legs spread widely apart. Some of the photographs focussed on the child's genitals.

Testimony at the trial revealed that the female accused had become involved with a commercial enterprise specializing in the sale of erotic lingerie through the homes of sales representatives. The female accused was one such sales representative, and would hold "parties" at which she would model the lingerie for an audience of invited guests. The erotic lingerie sold by the female accused had been used as a source of costumes for her daughter when the little girl had participated in the photographic sessions. Evidence was also adduced to the effect that the two accused had shown copies of "Playboy" to the girl, had asked her to emulate the poses of the adult models depicted therein, and had photographed her in these poses.

The trial Judge concluded, with the aid of expert testimony from a child psychiatrist, a child psychologist and a social worker, that the photographs were inappropriately sexually suggestive given the age of the girl concerned. A number of factors grounded his conclusion: (i) the prominent display and apparent emphasis on T.'s genitals; (ii) the number of such photographs; (iii) the fact that, where clothes were worn by T., they were in the nature of lingerie; and (iv) the inappropriateness of the poses and clothing, where worn, having regard to the age of the child. The trial Judge remarked that "the child T. is assuming provocative adult poses at a stage in her life when she does not even exhibit secondary sexual characteristics."

On the next issue before the Court, namely, whether the photographic depiction of the child in this manner constituted participation by Mrs. E. and Mr. F. in "sexual immorality", the trial Judge considered that the legal test was an objective one, and therefore, that it was immaterial whether the photographic sessions in which T. had participated were a manifestation of the family's nude lifestyle. On the basis of the content of the photographs, the age of the child participant, and the manifest failure of the accused to provide acceptable sexual guidance to their child having regard to her age, the trial Judge concluded that both accused had participated in "sexual immorality" within the home of the child T.

On the issue whether the child's morals were endangered by the accused's conduct, the trial Judge held that, although the Crown need not prove some present harm or injury to the child's morals, it must prove that there is genuine risk that the child's morals have been endangered. Extensive expert evidence was sought on this issue, and indicated that the child T. had been exploited sexually in a manner that could be considered child abuse. It was stated that the photographic depictions evidenced an undue emphasis on sex rather than on love, on outward appearance rather than on inner-self, and that the parents' conduct could be detrimental to the child's self-image and to her emotional and moral development. It was further testified that a child of T.'s age would probably not be able to interpret these acts and would see them as a way of gaining parental affection, and that this perception could be harmful in confusing the child about the nature of healthy expression of affection between her and her parents. A social worker specializing in child abuse testified that T. had been exposed to adult forms of behaviour with sexual overtones inappropriate to her development, and that this could lead to role confusion about how one appropriately expresses love and affection with a family. All the experts agreed that this type of photography, insofar as it involved the child T., should cease, and the trial Judge accordingly held that the Crown had met the onus of proving beyond a reasonable doubt that T.'s morals had been endangered. Further, it was held that the Crown need only prove that Mrs. E. and Mr. F. intended to engage in the acts found to endanger the child's morals; it was not necessary for the Crown to prove that the accused consciously intended to endanger the child's morals by so-acting, or even that the accused intended to participate in sexual immorality.

The accused were accordingly, convicted of participating in sexual immorality in the home of a child and thereby endangering her morals, contrary to section 168 of the *Criminal Code*.

At the sentencing stage, the trial Judge noted that neither of the accused was alleged to have been involved in any way in improper physical or sexual contact with the child T., nor was there any suggestion that the photos in which T. was featured were taken with a view to publishing or distributing them. He further stated his conviction that the investigation and trial process had made the accused realize that to continue this type of activity posed a real threat to the child's moral development, and therefore that the protection of the public, which is one of the principal considerations in the sentencing process, could best be achieved by promoting the accused's rehabilitation.

Accordingly, the sentence of both accused was suspended and a three year probationary period was imposed. The conditions of probation were that no photographs were to be taken by either accused or by anyone else at their direction or under their control, in which the child T. was nude or partially-nude or in which any other nude or partially-nude person was photographed in the presence of the child T. Both accused were required to submit to psychological and psychiatric assessment, counselling and treatment with the

child T., under the direction and on-going supervision of the local child protection services. Further, the accused were required to provide the representative of the local agency free access to their home, without notice and at all reasonable times, for the purpose of enabling the on-going supervision process to be carried out.

A review of these case studies and others assembled by the Committee indicates that child pornographers are usually detected in one of three ways. Their identities become known by: direct police investigation, often stemming from other types of complaints or suspected infractions; the police being notified by film processing laboratories; and direct complaints made by victims or their parents (the latter appears to be the least frequent means by which such cases come to light).

In most of these cases, prior to the incident having been investigated, the police had no previous knowledge of the child pornographers. The child pornographers usually operated on their own, and notably, males were involved in all of these instances. Where two or more persons were involved, most of the offenders were males. However, cases also occur in which a male and female show pornography to children, take sexually explicit pictures of them and commit other sexual offences. The situations described in the case studies clearly show that the pornographic pictures taken of children involved both boys and girls.

Most of the children photographed were also either sexually fondled or assaulted. This sequence of making child pornographic pictures and sexually assaulting children closely parallels the cases documented in Chapter 55, *Associated Harms*, in which children were shown pornography and then an attempt was made to assault them sexually, or actual sexual assaults occurred. In each situation — the making of pictures and the showing of pornography to children — the common element which is almost invariably present is the culmination of the encounter in an actual or an attempted sexual assault against the child.

In a majority of the incidents documented, the children already knew the child pornographers who frequently held positions of trust. Some individuals had deliberately become associated with various youth-related activities for the purpose of being in close contact with children whom they subsequently sought to entrap. The positions of trust involved, included: family friend, school photographer, father, probation officer, members of Big Brothers and Boy Scouts, school teacher, university professor, and landlord, among others. Pornographers typically bribed or lured children to their homes, and after seeking to lull their suspicions, gradually proceeded to a situation in which the children were enticed, or on occasion, forced to pose nude. This stage was often followed by an attempt to photograph the child performing some form of sexual act either with the pornographer, or less often, with other children. In relation to how cases involving the making of child pornography came to the attention of the police, it is evident that only a small proportion of the cases directly resulted from complaints made by victims or their parents.

Summary

In the Committee's judgment, the findings indicate the need for a comprehensive educational program to be given on the media and in the schools to inform and alert children about situations of this kind. This approach may be criticized by some on the grounds that children may become unduly afraid of all contacts with adults or that it is not the business of the state to intrude in matters which are more properly the concern of parents. However, the available evidence suggests that these are situations that children find difficult to discuss openly with members of their families or friends.

The Committee believes that children who are educated about these risks will be better able to protect themselves, and also, will obtain the encouragement and reassurance necessary to help them overcome their reluctance to identify persons who have attempted to take or have taken pornographic pictures of them.

References

Chapter 52: Production and Distribution of Child Pornography

[1] *R. v. McCormick*, unreported, January 10, 1980 (Ont. Co. Ct.).

[2] *Ibid.*

[3] *Ibid.*, See also on this point *Re Hawkshaw and The Queen* (1982), 69 C.C.C. (2d) 503 (Ont. C.A.), leave to appeal to Supreme Court of Canada granted (Laskin C.J.C., McIntyre and Wilson, J.J.) November 1, 1982.

[4] *R. v. McCormick*, unreported, January 10, 1980 (Ont. Co. Ct.) at 23.

[5] *R. v. McCormick*, unreported, March 14, 1980 (Ont. C.A.).

[6] *Ibid.*, at 2-3.

[7] *R. v. Ariadne Developments Ltd.* (1974), 19 C.C.C. (2d) 48 (N.S.C.A.).

[8] *Ibid.*, at 51-2 *per* MacDonald J.A.

[9] *Ibid.*, at 59-60 *per* MacDonald J.A.

[10] *Ibid.*, at 60 *per* MacDonald J.A.

[11] *R. v. The MacMillan Company of Canada* (1976), 31 C.C.C. (2d) 286 (Ont. Co. Ct.).

[12] *Ibid.*, at 289-96.

[13] *Ibid.*, at 321.

[14] Gulo, M.V., A.W. Burgess and R. Kelly, Child Victimization: Pornography and Prostitution, *Journal of Crime and Justice* 65:69, 1980. This report notes that American bookstore prices range from $5 to $20 for magazines, and refers to a 50-foot reel of film depicting sex acts between two youths, that was scheduled to sell for $50 (U.S.).

[15] Review of child pornography seizures held on file at the Office of Chief Investigator, Canada Post, Ottawa.

[16] *Re Hawkshaw and The Queen* (1982), 69 C.C.C. (2d) 503 (Ont. C.A.), leave to appeal to Supreme Court of Canada granted (Laskin C.J.C., McIntyre and Wilson, J.J.) November 1, 1982. According to the Registrar of the Supreme Court of Canada, this case will be argued during the 1983-84 judicial term.

[17] *Re Hawkshaw and the Queen* (1981), 62 C.C.C. (2d) 289 (Ont. H.C.).

[18] *Supra*, note 16, at 510 *per* Howland C.J.O.

[19] *Ibid.*, at 515-516 *per* Howland C.J.O.

[20] *R. v. E. and F.* (1981), 61 C.C.C. (2d) 287 (Ont. Co. Ct.).

Chapter 53

Contents of Pornography

In order to determine the types of sexually explicit depictions contained in pornographic magazines, a content analysis was undertaken of the issues for June, 1983 of 11 magazines which are widely distributed in retail outlets across Canada.[1] These magazines had an audited Canadian circulation of 13,539,900 copies in 1981.[2] The definition of pornography adopted in this content analysis derives from the listing of specific types of sexual acts used elsewhere in the Report. The Audit Bureau of Circulation statistics for 1981, those most recently available when the analysis was undertaken, were used as the basis for the selection of the 11 pornographic magazines.

For each magazine, each page was divided into 12 equal parts in order to determine how much space was devoted to photographs, text, cartoons and advertisements. The analysis of the contents of the photographs in these magazines was developed on the basis of the list of sexual acts used by the Committee in relation to the analysis of sexual offences. For each photograph, a number of different features might be identified with each being separately counted. For example, a photograph which depicted a nude man with his genitals shown being kissed by a fully clothed woman would be listed under the categories of: fully dressed woman; kissing; nude man; and genitals explicitly depicted.

A similar list of sexual acts was used in the textual analysis, with the addition of categories for children and handicapped persons. No distinctions were made between letters, editorials, articles and fiction: the emphasis was on the number and variety of sexual acts described in the complete text of each magazine. Instead of using "story" as a unit (as "photograph" can be used), "vignette" or "episode" were deemed to be more appropriate. Otherwise, a five page story in which a male commits 12 acts of sexual intercourse in 12 different situations, for example, would be given the same weight as a single paragraph in the letters column describing one act of intercourse. If an act occurred in a discrete piece more than once, it was only listed once, as an element of the piece. For example, in an anecdote about group sex in which three participants simultaneously committed acts of oral sex, oral sex is listed once as an element of that vignette.

As part of the textual analysis, the letters column of each magazine was examined in relation to the gender of the correspondents, as were the feature writers listed in the Tables of Contents, the publishers and the editors. Finally, a detailed examination was made of the advertising contained in each magazine. Lists were drawn up of the types of products advertised; these products were then categorized either as general consumer goods or as sexually oriented goods.

The Magazines Reviewed

There was considerable diversity in the contents of the 11 magazines, with each catering to somewhat different tastes in relation to the types of sexual behaviour or acts portrayed and the degree of explicitness in sexual depictions. Before providing a content analysis of these magazines, a summary is given of the salient features of each publication.

Penthouse is the top-selling pornographic magazine; it sells five million copies every month worldwide,[3] almost a tenth of which are bought by Canadians.[4] It contains a slightly higher than average amount of photographs. These, however, account for a relatively low percentage of the entire contents. Although the number of advertisments in *Penthouse* is only half of that in *Playboy*, it is still about double the average found in most of the other magazines. About two-thirds of the products advertised are general and men's consumer goods and the rest are sexually oriented products, most of which are available by mail order. Many of the articles aim for the same tone of general interest as those appearing in *Playboy*, but in addition there is a comparatively high level and variety of sexual content, especially in the "Forum" (letters from the readers) section. The photographs explicitly depict the female body; there is some variety in the subjects and acts portrayed.

Playboy, founded almost 25 years ago, is the oldest magazine of its genre, and something of a prototype. At 274 pages, the June, 1983 issue is twice the length of the other magazines and while it has a slightly higher than average number of pages devoted to photographs of all kinds, these account for a very low proportion (17.3 per cent) of its overall content. The difference is advertising. *Playboy* has three and a half times the average amount of advertising, most of which displays expensive general and men's consumer goods. Not much of the text is devoted to exclusively sexual subjects. The sexual content of the photographs is typically restricted to depictions of nude and partially nude women, posed singly.

Hustler has the third highest sales among pornographic magazines in Canada. The June, 1983 issue contains a relatively high proportion of violent images in the text (photographs and illustrations). The photographs are explicit and cover a wide range of sexual activities, including a simulated lesbian bondage scenario.[5] Most of the text is sexually oriented and only a small proportion of material is of general interest — for example, an article on Unidentified Flying Objects (U.F.O.s). The advertisements are almost exclusively sexually oriented; the few which are not are small and advertise mail order products.

Gallery, at 114 pages, is one of the shorter magazines. It contains a fairly high percentge of general interest features, for example, articles and reviews of generally released films. The sexually oriented photographs depict women

singly, or in one case in a non-sexual duo. In contrast to *Playboy*, this magazine does not contain much advertising and only one third of the products are general consumer goods, most of which are available on a mail order basis. The sexually oriented advertisements are generally non-explicit. *Gallery's* "The Girl Next Door" feature is a phenomenon common to half of the magazines reviewed, in which photographs of non-professional female models are sent in by readers, most popularly in monthly contests: "Friends and Lovers" in *Genesis*; "The Girl Next Door" in *Gallery*; and "Beaver Hunt" in *Hustler*.

Cheri is billed as "The All-True Sex News" magazine. It has a somewhat different format than the others, for as well as the standard pictorials, it has a high proportion of photo-journalistic stories involving locations which the staff of the magazine has visited. In the June issue, for example, these stories describe a nudist camp, a lingerie and sexual aids' boutique, and a number of nightclubs. Everything in the magazine is sexually oriented, including all but a very small proportion of the advertising. *Cheri* has a higher proportion of its contents devoted to photographs than any other magazine, as well as having more actual pages of photographs. The contents of these photographs, specifically the ones accompanying the news stories, are explicit and professional.

Playgirl, a pioneer in its field, publishes photographs of nude men instead of women. It is the only magazine in which references in the text are made to contraception and pregnancy. The photographs are relatively uniform: nude or semi-nude, shots of single men and one pictorial of a heterosexual couple. It has the lowest number of photographic pages of any magazine other than *Forum*, and at 132 pages, it is slightly below the average length. The text emphasizes general issues, humour, what are perceived as women's issues, and an average amount of sexually oriented content. One-third of the advertising is devoted to general and women's products, while the other two-thirds concerns sexually oriented goods.

Forum is something of an anomaly in terms of its format. It originated in response to the positive reception by readers of the "Forum" section in *Penthouse*, and its contents are mostly text rather than photographs. Small, more like a journal or book than a magazine, it contains articles by sexual therapists and other experts, more anecdotal, titillating articles, as well as a large selection of letters, some of which seek advice and some of which relate sexual experiences. The advertisements are largely devoted to sexually oriented goods. The text — specifically the letters — contains most of the references to pedophilia and incest found in the review of the 11 magazines. Of nine photographs, only one is in full colour, and that is the cover. It is the only magazine to depict sexual scenes between two men.

Oui's format contains pictorials interspersed with general interest articles and a sizeable amount of sexually oriented material. There is some emphasis on violence in the text and photographs. It is the only magazine to have a full pictorial of a nude woman posed with an animal. It has the second highest number of pages of photographs. The proportion of advertising is low and the majority (84.5 per cent) of the products advertised are sexually oriented.

Club magazine claims a worldwide distribution of two million copies,[6] 2 per cent of which are sold to Canadians.[7] The magazine contains the widest range of depictions of sexual behaviour, both in its photographs, but especially in its text. There is an emphasis on bondage, sadism and masochism, as well as on scatological elements and other fetishes. In format it is slightly larger than the other magazines, which (except for *Forum*) are a uniform 8 x 10 3/4 inches: *Club* measures 8 3/4 x 11 7/8 inches. It has a high proportion of photographs and a low proportion of text and advertisements. The products displayed are almost uniformly (91.0 per cent) sexually oriented.

Swank, at 100 pages, shares with *Club* the distinction of having the least number of pages, though both their cover prices, along with *Hustler*, are at the top of the $2.00 — $3.95 scale. *Swank* contains reviews of X-rated films, interviews with pornographic movie actors and other related features. The textual content is completely sexual — the cover promises "Sex On Every Page!" — as are the advertisements (92.4 per cent of the products advertised). It has a fairly high proportion of photographs, many of which are explicit and depict a wide range of participant subjects.

Genesis ("Celebrating the Good Life") follows the format of interspersing mainly sexual contents with articles of general interest. There is an average proportion of photographs, and the pictorials, almost without exception, are of individual females. The amount of advertising is slightly below average, and the majority of the products displayed (55.6 per cent) are general consumer goods, half of which are available on a mail order basis. There are a few articles relating to other pornographic media, as well as "how to" articles: "Winning with Women: Score with Personal Ads" and "How to Score with a Waitress". There is one violent image, but otherwise not much violent content.

Six of the 11 magazines have proportionately more page space devoted to photographs than to any other feature. Generally, the magazines containing more explicitness and sexual variation are those having proportionately the most photographs, while the magazines which also include general interest articles and contain less variety in their sexual content have a higher proportion of text and/or advertisements.

Magazine Covers

Apart from *Playgirl*, which displays a photograph of a fully dressed male celebrity, the covers of the magazines are fairly uniform: all have glossy colour photographs which display partially clad women with no sexual parts of the body showing. Some of the cover models are dressed in revealing clothes (*Gallery*, *Cheri*, *Forum* and *Oui*), some are wearing lingerie (*Playboy* and *Hustler*) and some are practically nude (*Penthouse*, *Club*, *Swank* and *Genesis*). The covers of the last four magazines display most of the models' breasts, though their nipples are not shown. (The nipples of the model on the cover of *Club* are partially visible, but are covered by a sticker in the Canadian edition). In none of cover photographs is the model's pubic area visible: it is either covered or off-camera. The cover of *Hustler*, which contains a rear photograph of a woman from the waist down, is the only cropped photograph.

General Scenes

General scenes, for the purposes of this study, are defined as photographic representations of non-human subjects, or in some cases, shots depicting persons in an unambiguously non-sexual way: for example, a crowd scene or a news photograph. All the magazines, except for *Forum*, have general photographs ranging from less than 1 per cent to 8 per cent of the photographic

pages. In the majority of cases, the general photographs are smaller in size than those which are sexually oriented, though most of them are in colour.

Individual Females

With the exception of *Playgirl* and *Forum*, most of the photographs in these magazines depict individual female models. The highest proportions are in *Genesis* and *Gallery*: 82.4 and 72.4 per cent of their photographs, respectively, are devoted to individual women. These magazines, along with *Playboy* (55.5 per cent), follow a fairly predictable formula with few variations. *Playboy* contains a large proportion (40.8 per cent) of photographs in which the subject is fully clothed and/or is only visible from the shoulders up. Some of these are in the nature of news or celebrity photographs; a smaller proportion depict the authors of articles in the magazine. The majority of these non-sexual photographs are of women depicted in sexual ways elsewhere in the same pictorial, or of women identified as "Playmates".

In depictions of individual females, the majority of the sexual content in these three magazines is in the form of glossy colour pictorials, usually several pages in length, featuring one model. The overall emphasis in these sexually oriented photographs is on partially dressed rather than fully nude models. Accessories are popular — lingerie, high heels and stockings. In *Playboy*, *Gallery* and *Genesis*, there is not much variety: breasts are exposed in half to three-quarters of the photographs, buttocks in 9.9 to 19.4 per cent, and the pubic area in 18.4 to 39.0 per cent. Genitals are displayed in one in six pictures in *Genesis*, only twice in *Gallery* and never in *Playboy*. The individual models are sometimes depicted either as touching themselves or as removing or loosening their clothing. Generally, the models are inactive and posed to be seen rather than to depict any type of particular activity.

Cheri magazine, though different in format, does not differ much in its depiction of individual female models: it follows the glossy pictorial format, and is comparable to *Gallery* and *Genesis* in terms of explicitness and the types of acts depicted. The photographs of women in *Penthouse* follow a similar format, except that they are more explicit than those in *Playboy* or *Gallery*. Half (50.4 per cent) of the photographs in *Penthouse* are devoted to individual females: different participant-subjects occur in a large proportion of the photographs. *Hustler*, *Swank* and *Oui* are correspondingly more explicit: the former two have a greater number of explicit photographs of genitals than non-explicit depictions. These magazines also have a number of scenes depicting masturbation, bondage, sadism and masochism.

Club magazine is in a category by itself, in terms of the variety of acts depicted. The issue contains only five photographs of clothed women; otherwise, the bodies of the models are displayed explicitly and a high proportion is engaged in masturbatory activity. There is some emphasis on apparent vaginal penetration by foreign objects — though not in the main pictorials — and a

heavy emphasis on bondage, sadism, masochism, leather clothes and fetish items and elements of violence. The latter are often obscured by the corresponding text. For example, there is an 11 x 7.5 cm. photograph of a women's feet, clad in high heeled sandals, protruding from the trunk of a car. The image could arguably be construed as a violent one, yet the accompanying text, although sexual, de-emphasizes any violent constructions:

> "... Why hasn't some inventive entrepreneur cum[sic] up with the Pussy Pick-up? We can see it now. Drive-in, check out the merchandise muffs, make your selection, and drive away for a piece of ass or whatever else it is you desire. This klutz, though, could have at least put her in the front seat. How can she give a proper blow job from all the way back there?"[8]

Apart from its cover, *Forum* contains practically no photographs of individual females. *Playgirl* contains 21 photographs of women, none of which is sexually oriented. In these two magazines, about two in five photographs of individual women are in colour, in contrast with the 90-100 per cent range in the other magazines.

Two or More Females

Couples who are supposedly lesbian are a popular subject for full-scale layouts. The pictorial in *Hustler*, "Love Slave", is noteworthy for its inclusion of a strong theme of sadism and masochism. The text reinforces this theme with the catchwords "slave" and "mistress". The photographs depict ritualized scenes of bondage, masturbation, simulated oral sex and simulated vaginal penetration by a riding crop. In one full page photograph, the "slave", described in the text as a "young girl", is depicted tied to the bedposts while her black-clad "mistress" kneels over her, the high heels of her boots suspended inches away from the other's exposed, practically hairless vulva.

"Rawhide", a pictorial in *Club*, while it lacks the sadistic overtones of "Love Slave", contains several comparable elements: it depicts simulated acts of oral sex and explicit close-ups of model's genital and anal areas. The setting and costuming are pseudo-western.

"Steam Heat" in *Swank* follows the same format, with simulated kissing, caressing, masturbation, three scenes of simulated oral sex and one scene in which one model holds a bath-brush against the other's buttocks. The setting is a shower. The models' bodies are depicted explicitly; as is the case with *Club*, most other shots of female models together are stills from films.

Although the emphasis is different, "Pillowfight" in *Oui* continues the lesbian theme. "Tina and Marci are room-mates at Yale", the caption reads. "Tina studies biology, Marci wants to be an actress. They've been friends all their lives." The same types of acts previously noted are depicted with a comparable degree of explicitness, though the setting is a large white bed covered with goose feathers and the models are young and playful.

Gallery has a pictorial of two women posing nude together with no sexual activity and devotes approximately six pages to this category. *Cheri* has approximately 13 pages of women posing nude and semi-nude together, with minimal sexual contact. *Playboy*, *Forum* and *Genesis* have no photographs in this category, and *Penthouse* and *Playgirl* have one and three, respectively.

Heterosexual Couples

Several of the magazines have full-scale colour pictorials of heterosexual couples. In the pictorial in *Penthouse* which accounts for all but three of the photographs in this category, "Steve" and "Leanne" engage in caresses and simulated oral sex. The female model engages in masturbatory activity and her body is explicitly depicted.

Swank also contains a pictorial, "Lust Affair". The setting is affluent and exotic; the models are wearing lingerie. The caption is, "She only wants him for sex. That's fine with him". Though more explicit, the acts depicted are similar to those appearing in *Penthouse*, with the addition of one subdued fetish image: in one photograph, a woman holds the high heel of her shoe against the man's penis. Three of the photographs are censored, two of which depict oral sex.

Club has 44 photographs of couples. The bulk of these are contained in one pictorial, "Joe and Sugar", which is cast in a setting evocative of the gangster films of the 1930s and includes depictions of: caresses, simulated oral sex, explicit views of female genitals and five photographs of actual or simulated intercourse. Elsewhere in the magazine, other depictions include one instance of oral/anal contact, six of actual or simulated intercourse, bondage and sadomasochistic paraphernalia, some violence, and fetish-related activities centring around lactation and high-heeled shoes.

Playgirl contains a short pictorial in which the models undress and caress each other. The emphasis is on the man's nudity; the woman is never fully shown. The other photographs in this category are mainly news photographs or stills from generally released films, none of which is explicitly sexual.

None of the other magazines places much of an emphasis on heterosexual couples, though all contain some photographs of this type. *Cheri* has 20, *Playboy* has 11, *Hustler* has six, *Gallery* has six, *Forum* has four, *Genesis* has four and *Oui* has three.

Individual Males

Swank magazine has no photographs of individual men, and *Penthouse*, *Playboy*, *Gallery*, *Cheri*, *Forum*, *Oui* and *Genesis* have between less than a fifth of a page and about three pages, none of which contains sexual content involving individual males. *Hustler* has one photograph of a nude man in the

"Beaver Hunt" section and *Club* displays two partially dressed men and one in black leather with his genitals partially visible.

About three in five (61.3 per cent) of the photographs in *Playgirl* are devoted to individual male models. Half of them are totally nude with the models' genitals being explicitly depicted. Five models appear to be undressing and one is touching himself. The shots are in colour; some in the pictorial format and some in a tenth anniversary section feature models from previous issues of the magazine.

Two or More Males

Playboy, *Gallery* and *Playgirl* all have a few photographs in this category, none of which has sexual content. Of the other magazines, only *Forum* has pictures in this category. *Forum* has three photographs which accompany an interview with a gay man: monochromatic depictions of the torsos of two men who hug and caress each other.

Mixed Gender Groups

Oui magazine has the most pages devoted to photographs of mixed gender groups engaging in sexual activities; it is the only magazine which has a full pictorial in this category, "The Revolt of the Slave Girls". This pictorial involves three "slave girls" and their "master". The acts depicted include: actual or simulated oral sex, vaginal sex and caresses and, once the slaves revolt, seven photographs of ritualized sado-masochism.

The photographs in this category in *Playgirl* and *Gallery* do not depict sexual acts. In *Club* and *Swank*, there are approximately two pages each of photographs of mixed gender groups, most of which are stills from pornographic films depicting explicit sexual acts. The other magazines also have relatively few photographs in this category.

Other Groupings

In addition to the foregoing categories, there are two photographs of transvestites or transsexuals and two depicting women with animals. In the former category, there is a news-style photograph of an entertainer in *Playboy* and a photograph in *Club* of what appears to be a woman exposing her penis. In the latter category, *Hustler* contains a small colour photograph of a naked woman with a large boa constrictor and *Oui* contains a pictorial called "The Lady and Tiger", which features a nude female model posed with a tiger. Although no sexual acts are depicted, the text states:

> "Since I was a child, I have been attracted to wild animals . . . sometimes the feeling is sexual. Imagine the power of a tiger, the roughness of its

tongue. How could any date I might have compete with that? [. . .] My needs -- *all* of them -- are taken care of . . . ".[9]

A number of advertisements of books and magazines with contents related to bestiality and transvestitism/transexuality are listed in several of the magazines. Typically, however, editorial content does not refer to these subjects.

Violence in Photographs and Illustrations

There are a number of violent images depicted in the magazines, some of which take the form of illustrations. *Hustler*, for example, has a two page illustration of a blood-splattered female torso. Her blouse is open, her nipples erect. Beside her on the floor is manuscript, "The Bloody Blade: Confessions of the Fisherman". The accompanying text reads:

> "When I smiled, my lips tasted of her strawberry lipstick. Her tits wobbled playfully as I slapped them again, hard. Then I pulled the bait knife from my back pocket. I nicked my finger and swore. This put the delicious terror back into the girl's eyes. The rape had felt good, but the best was yet to come."[10]

A long, narrow knife lies across these pages which is splattered with blood. The accompanying story details the capture of a man who rapes, kills and mutilates young women.

A story in *Oui* entitled "Nazis On the Loose!" is accompanied by two full-page illustrations, the first of which inaccurately depicts three men and one woman in Nazi uniforms sitting at a table, apparently torturing a baby. As a background portrait of Hitler looks on, there is blood dripping from the table, one man wields a knife and a large Alsation dog slathers. Upon turning the page, the reader sees the same persons, apparently years later, sitting down and enjoying a peaceful meal. One of the men is carving a chicken.[11]

Accompanying "The Great Crime-Wave Myth", an article which states that crime is on the decrease, *Genesis* magazine published a one and one-third page photograph of a female body under a blood-stained sheet, lying in what looks like an alley or street. No clothing is visible, though the woman's bare legs and arm protrude from under the cloth.

Swank magazine has three photographs of women in boxing gloves and helmets engaged in "bare breasted boxing": "The girls come out swinging! Dangerous Dotty lands a breathtaking blow to the boobs! And a crunching chop to the cleavage!!! The men at ringside are going wild!" In the same issue, accompanying a story entitled "Fuck or Die!", there is a two page photograph of a woman and man partially undressed and engaged in what appears to be actual or simulated intercourse as an onlooker nudges the man's buttocks with a gun and another man looks on.

Club has several depictions of persons who are bound or are threatened by whips. It also contains a short series of photographs from a film of two women engaged in a dispute in which one woman wields a whip and several times apparently bloodies her half-naked adversary.

Types of Sexual Acts Depicted in Photographs

The salient features of the photographs contained in 11 pornographic magazines circulated across Canada during the middle of 1983 are summarized in Table 53.1. It is recalled that the number of features or elements listed exceeds the actual number of photographs contained in these magazines. Thus, if a photograph showed both a female's breasts and a male's penis, both depictions were counted.

The results of the content analysis indicate that sexually explicit depictions were portrayed in most of the pictures in the 11 magazines analyzed. Included in these depictions were not only the genitals and erogenous zones of males and females, but also a sizeable number of actual or simulated sex acts involving two or more persons.

Cartoons and Illustrations

The average proportion of space devoted to cartoons and illustrations in the 11 magazines is about 7 per cent, or approximately 10 pages per issue. In addition to the violence portrayed in some of these illustrations, there is a large amount of sexually explicit material. The following are typical examples.

Gallery. One series accompanies an article on sexual techniques: they are small illustrations which depict kissing, caresses and intercourse.

Oui. Accompanying an article called "Cocaine Island" there is a two page colour illustration of two naked women on a beach, each with cocaine, some liquor and a pile of bank-notes. A scowling man in fatigues mans a machine gun and an armed motorboat cruises past.

Hustler. In an article on A.I.D.S. (Acquired Immune Deficiency Syndrome), a nude smiling woman is depicted kneeling on a bed, apparently being penetrated from behind by a grinning figure of Death, carrying a scythe.

Swank. In a two page colour illustration accompanying an article on "Fire of Desire", a woman, half naked, is depicted reclining on a bed. Her body is twisted so that her buttocks are topmost and her legs are open. She spreads her buttocks with her hand, and the lips of her labia are slightly

Table 53.1

Types of Sexual Acts Depicted in the Photographs in Eleven Pornographic Magazines: 1983

Situations/Sexual Acts Depicted in Photographs	No.	%
Person fully clothed	414	9.6
Person partially clothed (bathing suit, underwear	682	15.8
No clothing on trunk of body (excludes stockings)	521	12.1
Nude part of sexual parts of body shown, but not face	103	2.3
Use of sexual accessories	329	7.6
Person exposed body by loosening/removing clothing	37	0.8
Another person attempted/removed subject's clothing	29	0.6
Female breasts, nipples shown	723	16.8
Buttocks shown	181	4.2
Genitals shown (female pubic hair and labia; male penis and scrotum)	591	13.7
Anus shown	60	1.4
Sexual positioning between two or more persons (no contact)	78	1.8
Masturbation, touching/fondling breasts, buttocks, genitals	252	5.9
Kissing mouth, other parts of body	83	1.9
Oral-genital contact (actual or simulated)	30	0.7
Oral penetration with object	4	0.1
Vaginal/anal penetration with penis (actual or simulated)	11	0.3
Vaginal/anal penetration by finger or object (actual or simulated)	7	0.2
Bondage equipment, clothing, elements	92	2.1
Fetishism	10	0.2
Elements of force against victim, violence, use of weapons	53	1.2
Picture partially censored	12	0.3
Other†	11	0.3
TOTAL	4313	100.0

† Other includes: actual simulated oral-anal contact (2); homosexual relationship (2); victim being murdered (2); and display of pornographic magazines (5).

parted. The other character in the scene is a fireman, and the hero of the story. He is in the foreground of the picture, looking at the woman on the bed. He carries a firehose, the nozzle of which is pointed at the woman's vulva.

Club. A monochromatic illustration of a man holding an empty picture frame up to the naked buttocks of a woman who is otherwise covered in black leather. The man is turned, winking at the viewer. The article is called "Ass Crazy".

Hustler. An apparently young girl is saying her prayers before bed, overseen by her parents. She smiles and says, "And bless that man at the playground today who let me rub his thingie!" One inference that can be drawn is that the child had enjoyed the experience.

Types of Sexual Acts Depicted in Text

In the contents of the text in each of the 11 magazines, there is a wide range from articles on general topics to explicit descriptions of sexual violence, degradation, fetishes, sexually deviant behaviour and sexual offences. In the analysis of the text, similar categories were used as those employed in the review of photographs in these magazines.

In Table 53.2, a listing is given of the types of situations and sexual acts described in the mid-summer 1983 issues of 11 nationally distributed magazines. The following are some examples of the text from which these statistics were compiled.

Case Study 1

". . . A large wobbling backside somehow seems to solicit punishment. It's like an inflated balloon that makes you want to prick it with a pin or apply a lighted cigarette to it. And the female's ass makes such a satisfying target. The devastation of a balloon gives only a moment's mildly sadistic pleasure — like stamping on a bug — but the buttocks can soak up an astonishing amount of punishment. They seem to fight back, too — insolently juddering and glowing under chastisement. This is far better than a totally passive response with no visible or audible return for effort. You know how unrewarding it is to beat up a wet sponge.[12]

Case Study 2

". . . I was on holiday in Tangiers in 1964. A road was being constructed, and the laborers were living in tents nearby. One night I approached one of the tents and crawled in. I was afraid the laborers would think I was a thief, or that one of them would shout and jump up if I surprised him in his sleep.

I touched one of them tenderly on his leg, then on his thigh, and when he didn't move I finally put my hand on his crotch. He sat up. Then he saw that I was a white man and he understood immediately. He lay down again. I got his cock out and sucked him off. And then the others awoke — six all together. We went outside and they fucked me.

Forum: Why didn't they have sex with each other?

Table 53.2

Types of Sexual Acts Depicted in the Text in Pornographic Magazines: 1983

Situations/Sexual Acts Depicted in Text	No.	%
Person exposed body by loosening/removing clothing	65	8.0
Another person attempted/removed subject's clothing	59	7.2
Masturbation, touching/fondling breasts, buttocks, genitals	168	20.6
Kissing mouth/other parts of body	71	8.7
Oral-genital contact	110	13.5
Oral-anal contact	12	1.5
Vaginal penetration by penis	76	9.3
Vaginal penetration by finger, fist or object	28	3.4
Anal penetration with penis	8	1.0
Anal penetration by finger, fist or object	17	2.1
Homosexual elements	20	2.5
Use of sexual accessories	8	1.0
Bondage equipment, clothing, elements	33	4.0
Fetishism	67	8.2
Incest	5	0.6
Elements of force against victim, violence, use of weapons	30	3.7
Victim raped/murdered	3	0.4
Pornography — users, makers	16	2.0
Strippers, swing clubs, prostitution	11	1.4
Other†	7	0.9
TOTAL	814	100.0

† Other includes: oral penetration by an object (1); thigh intercourse (2); suggestion of vaginal/anal penetration by object (1); contraceptives (3).

La Rue: It's not done. An Arab male would lose face if he violated the Arab sexual code of honor. A man will fuck a boy until the youth reaches puberty. Then he cannot touch him anymore. So he will look for another boy or a white man.'"[13]

Case Study 3

"... I cupped one of her breasts in my hand and sucked on it hard as I began to pump slowly and deeply, bringing my penis almost all the way out with each stroke and thrusting it back in again, moving my hips in a figure-eight action.

I alternated between quick and slow movements, making Joy gasp with pleasure. She lifted her hips violently to match my thrusts until, tossing her head from side to side and raking my back with her fingernails, she let go in an intense orgasm that nearly brought us off the bed.

Now it was my turn. I like to fuck a woman hard to really let her know that she has a man between her legs. I spread her legs wide, bringing my knees up underneath her thighs, and began pumping hard and fast. My balls were slapping against her and the head of my penis was hitting her cervix at each stroke. Joy gasped, 'Oh, darling!' with each thrust and lifted her long legs to give me greater penetration, raking my sides, bucking violently and gripping me firmly with her vaginal muscles until I shot my load deep inside her . . . "[14]

Case Study 4

" . . . She didn't know what was coming off at first. She felt me fooling around with her asshole, and she was up to taking two or three fingers easy.

Then I made a fist and began to work it into her. The way I do it is I get my fist around my dick and then work both of them in. I pulled out enough to do this, and then I let her have it fullforce — a ten incher with a fist wrapped around it.

I have to give it to the lady, because she didn't even scream. She just grunted and moved her legs to widen her ass some more. She took the whole thing with hardly a whimper, and I began to jerk off inside her ass. I had my prick in there and one whole hand up to the wrist, and she was letting me pump to the max. She was frigging her clit, and suddenly I felt her stiffen, and then her ass muscles began to contract as she came. I kept on pumping my prick and my fist, and I couldn't hang on. I began to spurt out my scum, jerking off hard, and it was one the best cums of my life.

Since then, Anna Punkerama and I have enjoyed an ideal employee-boss relationship . . . "[15]

Case Study 5

" . . . So I let her have it. My hand smacked those plump, round cheeks and the flesh resounded with the impact. She let out a long, slow moan. I rubbed the cheeks and felt the pussy hair peeking out from between them. She begged for more and I gave it to her . . . smack . . . smack! She moaned loving it' . . . .She was howling like a wolf, and those bright red, swollen ass cheeks were shaking like jelly . . . And then I pounded her, digging my dick in and out, faster and faster till I was gasping for breath and hit my peak . . . "[16]

Case Study 6

" . . . She removed his tie, shirt and bullet-proof vest. She put the vest on and took the gun from its holster. Stroking the barrel along her thighs, she wedged it between her legs, . . . 'Now,' she crooned. 'This is what I want you to do. Handcuff my hands behind my back and push me down face-up.' The water bed surged. 'Fuck me with your nightstick, slow and easy. Then put six bullets inside me and suck them out one at a time. Then you fuck me, beautiful man, slow and long. Do it now . . . don't be gentle, only slow.' . . . "[17]

Case Study 7

" . . . Ordering him to his feet, I prepared him for the next ordeal. With the aid of a wide leather posture collar, a tightly laced corset, high-heeled 'training shoes,' and a leather arm restraint, I adjusted Martin's poor posture. I then put a thick, heavy book on his head, and for a predetermined period of 15 minutes I led him around my chamber by a leash, advising him that every time the book fell from his head he would be punished accordingly.

Naturally, the book fell quite a few times, especially when I would unexpectedly change the direction of our stroll or jerk sharply on the leash. Again, my pupil did surprisingly well under such adverse conditions. Nevertheless, he had to be punished for his many failures. This time, the cane was applied to his ass cheeks, again slowly and painfully — one lash for every time he had failed to keep the book from falling . . . "[18]

Case Study 8

" . . . Bill is a guy I've been seeing for a couple of months and Andrea is a mutual friend . . . We were drinking a lot and as we got drunker and drunker we started talking about sex . . . I parted her ass cheeks wider and sent my tongue down her crotch. I licked her asshole and hairy cunt . . . She straddled my boyfriend and stuck his dick right into her creaming hole. I saw her shiver and toss her head back as his huge, engorged cock filled her . . . all three of us were rocking and screaming . . . "[19]

Case Study 9

" . . . Saturday night came and people started arriving . . . After about an hour I got such a rush from the dope that I guess I blacked out.

When I finally came to, I was experiencing a wonderful orgasm. Through my half closed eyes I looked down to find that I was completely nude and, to my surprise was being wonderfully eaten by a friend of one of our guests. What really shocked me though was that most of the people from the party were still there, sitting around, watching the show we were putting on . . .

Thomas [her husband] told me that I had gotten so high that I must have thought I was alone and going to bed. In the middle of the party, it seems, I stood up and began undressing and proceeded to lie down on our sofa. Ken, the guy that had been eating me, was sitting at the end of the sofa when I lay down. Then, it seems, I put one leg on the back of the sofa and the other on the floor, which gave him a beautiful view of my wide-open pussy. Everyone began to laugh and say that he should do something, including my husband. Well, it seems he fucked me first and then went down on me . . .

He [Thomas] asked if I needed a dick and I said I sure wanted his. He replied that he would first like to let me fuck someone else. He gently laid me on the floor and asked the guys if they also wanted some. Before the night was over, I fucked every guy there while their wives and dates cheered us on.

Since that night I have become much more relaxed about sex and my body . . . My husband, by the way, asked me to stop fucking everyone I see (including his boss) but I said that he had helped start it and now I needed at least three or four different cocks in me a week! . . . "[20]

Case Study 10

" . . . They slipped in [to the bedroom] and tied her wrists, just as Audrey woke up. She screamed and Jack pretended to be angry and told her to shut up. They removed her nightgown and spread her out, tying her to the bed. Then Sandra began to toy with her bush. 'Oh, you should shave this one. Honey, it would look so much better. See, like mine,' and she removed her clothes. Sandra has a beautiful cunt, slick as a baby's ass. Sandra played with Audrey's nipples until they were swollen and hard. Then she climbed up on the bed and, placing a knee on each side of Audrey's head, forced her cunt down on Audrey's face. 'Eat me out, suck my pussy, baby. Stick your tongue up inside and find my clit.' Audrey screamed "no" and yelled for me. I was just outside, watching through the window. 'I'll teach you to refuse me, you

bitch,' Sandra said. My cock was so hard I nearly creamed my jeans. Sandra and Jack then shaved Audrey's pussy. Audrey was pleading with them to leave her alone. 'No, baby. No, you are mine,' Sandra said.

Jack was stripped by this time and his cock was large and very hard. He went to Audrey and commanded. 'Suck this, whore.' Audrey looked at it and pleaded, 'No! No! Please don't!' But as Jack fed his cock into Audrey's mouth, she sucked and licked it until he shot his cum down her throat. With tears running down her face, she swallowed it. Then Sandra mounted her and Audrey ate her out. They repeated this, with Jack fucking Audrey in the mouth and ass. Audrey was soon worn out, but they kept it up for most of the day.

I had left and went to town to do some shopping. When I returned they had Audrey collared and on a leash, kneeling down . . . "[21]

Case Study 11

" . . . She's screaming with pleasure now that the gag's been removed. She knows she's undeserving of the big cock that's just fucked her silly. So don't cry for her, her own tears match her pussy spasms and juicy orgasms. When her master finally let her speak, all she could say was, 'Fuck me again. I'm so helpless without you inside of me. Fill me with cock and cum.' Her master obviously knows the ropes' . . . ."[22]

Case Study 12

" . . . one shapely woman was grabbed by one of the gunmen and pushed into another, smaller dining room. While several horrified, naked diners watched, the woman was pushed down on top of a table and raped at gunpoint . . . one of the gunmen, whom police later said was Bruce Garrison, started walking between the aisles where people were lying down and hitting them with his blackjack. Some were hit on the collarbone, some on the spine, others around the face . . . Some couples were startled to see a revolver shoved against their temples as they made love. The gunmen would order the man to pull out of the woman and finish off in her mouth, or to have her jerk him off . . . "[23]

Case Study 13

" . . . Marlowe struck her hard in the belly, knocking out her wind. She'd braced for the blow, but it came too quick and too strong for her to recover. He grabbed her throat in one hand and pushed her violently back to the couch, ripping her dress from the neck down to her waist. Another vicious rip tore Brigit's lace bra away, exposing her breasts. Anger and betrayal had brought the Fisherman back to life.

'You killed them,' Brigit gasped breathlessly, 'killed them all — raped and slashed 15 young women.'

'Yes, you stupid, filthy bitch,' he hissed. His hand left her throat and brutally squeezed her breasts. He planted his knee firmly in her crotch, pinning Brigit to the couch. She saw the growing erection in his pants and shuddered. He spotted the X-acto knife on the coffee table and grabbed it . . . "[24]

When a comparison is made between the types of sexual acts (actual or simulated) depicted in photographs in these 11 widely distributed magazines and the types of sexual acts described in the text, a sharp contrast emerges between the proportional emphasis given to the main categories of sexual acts.

Sex Acts Depicted	Photographs	Text
	No.	No.
Oral-genital contact	30	110
Oral-anal contact	2	12
Vaginal/anal penetration by penis (actual, simulated)	11	84
Vaginal/anal penetration by finger, fist or object	7	45
Bondage	92	33
Fetishism	10	67
Elements of force	53	33

In the proportionately larger number of photographs to the text appearing in the magazines, two types of situations occur more frequently: pictures showing bondage; and the use of force or violence against victims. In all other types of sexually explicit depictions, the text, on average, contains five times as many depictions as those appearing in the photographs of: oral-genital contacts; oral-anal contacts; vaginal and/or anal penetration by a penis; vaginal and/or anal penetration by a finger, fist or object; and fetishism.

With the exception of one or two magazines such as *Playboy* in which the text is largely devoted to journalistic contributions, there is a sharp shift between the main emphasis in the photographs and the themes of the text in the other pornographic magazines. **In most of the photographs showing sexual acts which may involve two or more persons, while the portrayal is often vividly graphic, the situations depicted may be simulations rather than actual sexual acts performed when the photographs were taken. This is especially true of depictions which apparently portray vaginal or anal penetration by a penis, finger, fist or object.**

In contrast, there is no pretense at simulation in the types of sexual acts described in the text of these magazines. Sexual acts are fully and explicitly described, often in lugubrious detail. The examples of the types of situations described are exemplified by the excerpts which have been given. These magazines, legally distributed across Canada, are considered to be 'soft core' pornography, i.e., in contrast to 'hard core' pornography, they are not thought to deal with an explicit and graphic depiction of the full range of sexual behaviour and acts. It is evident from the content analysis that in the text of some so-called 'soft core' pornographic magazines, there is a substantial element of 'hard core' matter being presented.

Sexual Depiction of Children in Text

There were 24 situations (3.0 per cent) in the text of the 11 nationally distributed pornographic magazines in which children and youths were por-

were portrayed in sexually explicit depictions. The youngest child described in situations of this kind was 11 years-old; the usual age range was between 13 and 17 years-old. The references to children involved in sexually explicit behaviour or acts were primarily contained in two magazines, *Forum* and *Club*.

The only mention of children in the June, 1983 issue of *Playboy* was a reference to an anti-child pornography statute in Chicago. *Hustler's* references to children included: the assertion that cold cereal was invented to inhibit children from masturbating; and an eight year-old girl who had found a booklet entitled 'Exotic Sexual Positions from Around the World' in a box of Cracker Jacks. *Penthouse* and *Hustler* expressed disapproval of pedophilia, particularly of the North American Man-Boy Love Association (NAMBLA).

In *Club*, there were two sexually explicit depictions of children, one involving oral-anal sex, the other referring to incest. In a vignette in the magazine's "Steiner Sex Probe", a boy and a girl, both at the age of puberty, are described as they are returning home walking through a park.

> "... She let me go on stroking her ass and said how nice it was that at least I didn't think she was an ugly freak ...
>
> I ... told her I'd like to prove what I'd said by kissing her ass if she'd let me. There was another long pause, then she whispered 'All right, George.' I think she was in heat. We went behind some bushes and she took her panties right off. Then she lay face down in the grass and remained very still apart from her heavy breathing. I lifted her skirt and marveled all over again at the breathtaking size and beauty of her ass. I began to caress and squeeze the luscious white cheeks. Then a really amazing thing happened. I suddenly felt the urge to be cruel to her ass: to whip it and cane it until it was all red and bleeding. This was a feeling I'd never had before and I only just managed to fight off the urge. God alone knows what would have happened if I'd given in to it. Screams of 'rape' and 'murder' I wouldn't wonder' ....
>
> I kissed and tongue-lapped each cheek in turn, taking my time over it. Then I opened her up and buried my face deep into the enormous cleft. I found her musky asshole and licked that too. I was about to shove my tongue up into her intestines but exploded into my pants before I had time ... "[25]

The second reference to children in *Club* is a letter purportedly written to the "Steiner Bureau" referring to incest and containing a reply given by the magazine's columnist.

> "Karl Steiner: Like Holly V. (Club 8/12). I'm in love with my brother. I'm 17 and he's 24. He's never screwed me or even asked, but I've been rubbing and sucking him off regularly since I was around 11. It all began during a game of 'doctors and nurses.' I guess he was really too old for that game, but I wasn't. I'm very good at getting him off and love the taste of his cum. He says I handle his cock better than any girl he's ever dated. He has a really fine cock that makes all the others I've seen and handled look small. Am I doing wrong in pleasuring my brother this way?
>
> Gina T.,
> Newark, New Jersey
>
> Yes, but only because there's no future in it for you. You are old enough now to understand that incest may be okay for the occasional kick (provided

there's no procreation) but seldom works out well in the long run. Find yourself a nice well-equipped guy outside of the family."[26]

In the content analysis of the text of the 11 adult sex magazines, most of the references to children and youths occur in the 'Open Forum' and the 'Forum Advisor' sections of *Forum* magazine. These descriptions, purportedly received from the magazine's readers, refer without exception to some form of sexually deviant behaviour, fetishes or situations involving incest. In the first reference, a boy "between sixth and seventh grades" and his mother are alleged to have experienced the following sexual activities.

> "... [my mother] told me that we needed to talk. She told me that since my father's death, she had began wearing diapers again (she had been a bedwetter until the age of 19) ...
>
> That night she came into my room to help me with my own diapers, although I usually did this myself. While she was snapping my plastic pants, I asked her if she was wearing her diapers. She lifted her dress and showed me her plastic pants ....
>
> At first I was afraid to show her when I'd had a bowel movement in my diapers, but she was obviously used to cleaning up her own messy bottom and thought nothing of mine.
>
> Soon my mother was walking around clad only in her nightie and diapers. We started talking about sex and she gave me my first handjob. Then she gave me my first blowjob. One night when I came home from a school basketball game, she complained to me about her messy diapers, and I offered to change her. As soon as her diapers were off. She pulled me down beside her onto the bed.
>
> Since then, our lives have been quite exciting ..."[27]

In a letter, apparently written by a male subscriber, a description is given of his boyhood experience with incest.

> "... The first time was when I was 16. When I was 15, my 41 year-old aunt seduced me and taught me how to suck on her pussy for hours at a time. I would eat her until she'd had at least four orgasms. She was a massive woman with large breasts and a large, hairy mons. Late at night I would sneak into her room (she lived with us) and I always ended up under her nightie, eating her ..."[28]

Brother-sister incest is the theme of another letter printed in *Forum*. A young man claims that his 17 year-old sister found him using an inflatable love doll while he was having "a great screw".

> "... She was shocked, but we discussed it. I told her I was horny and lonely, and she said she would help me remedy the situation.
>
> She and I went out on a 'date' and went dancing. My sister looked so sexy, I knew she was turning heads all over the room. She let me rub my cock on her thighs when we danced and when we got home that night, she gave me some oral sex ..."[29]

The letter concludes with the observation that the siblings intend to move to another state where they can live anonymously as lovers.

Under the caption "An Exciting Solution", the publishers of *Forum* printed a letter purportedly received from a father who describes his sexual feelings towards his 14 year-old daughter.

> "... My daughter Tracy is 14 years-old, tall, slim and blonde. Years of gymnastics and swimming have resulted in a firm young body — not yet that of a woman, but no longer a child's. I have seen my daughter's naked body often, but only glanced casually, although even at a glance it is obvious that she is going to be a beautiful young woman.
>
> Her breasts are still small, but they are well rounded. Her nipples are tiny, pink and delightful. She seems to be unaware of her growing beauty.
>
> One Saturday morning she complained of a severe tummyache. Rather than take her to a doctor, I consulted with a friend who is a registered nurse. She suggested that Tracy have an enema since she was extremely constipated.
>
> My friend told me how to prepare the solution. I brought a large towel into the bedroom and laid it on the bed. I told Tracy to raise her hips and pull her nightie up. I did not watch her.
>
> I decided it would be easier to lubricate the nozzle. Tracy was lying on her back, legs together, knees raised and her nightgown up to her waist. I later learned that I should have had her lie on her side, but I didn't know. I asked Tracy to open her legs, which she did, but only a few inches. I gazed upon her lovely young body. Even though she is a natural blonde, her pubic hair is quite dark by contrast. I was struck by the lips of her vulva, which were very small and tightly closed. Since she had barely opened her thighs, I grasped her ankles and did it myself. I was amazed to see the lips of her pussy open like a flower, exposing her secret place. Inside, she was a delicate pink color.
>
> By this time, it was hard not to stare and even more difficult to conceal my growing erection. Putting one hand on her thigh, I bent over to slide the nozzle into her rectum. My face was inches away from her vagina, I almost forgot about the enema, but the nozzle in my hand reminded me why I was there.
>
> I quickly and gently administered the enema, and then helped Tracy to the bathroom. By that evening, Tracy was greatly improved, and I realized that I had enjoyed one of the most erotic moments of my life. As I reflected on our encounter, I couldn't help but wonder what it would have felt like, to Tracy and to me, if I had plunged my penis into her vagina. I suppose we'll never know."[30]

The theme of sex education for male youths between 13 and 15 years-old is dealt with in a letter purportedly written by a nurse specializing in contraceptive counselling.

> "... Since the male doctor doesn't care to instruct boys [in sex education], he has delegated this responsibility to me.
>
> I take a boy, usually around 13, sometimes as old as 15, and have him undress in a private room. Then, when he is wearing only a brief robe, I tell him about the mechanics of sex, and about contraception and venereal disease. Then comes the good part.

I stroke the boy's cock until he has an erection. Sometimes the cock is already hard from the excitement of discussing this subject with an attractive young woman. When I feel the tension in the balls increasing and his penis twitching, I increase my stroking until he ejaculates.

When the physical task is over, the boy also knows how to masturbate. He also knows he's normal since he was able to come. To date, I have jerked off about 121 boys and it's all perfectly legal!"[31]

A somewhat similar episode is recounted in *Forum* involving a 15 year-old and an adult nurse. Other letters said to have been received by this magazine depict sexual acts involving 13 and 17 year-old males and 16 and 18 year-old females.

Characteristic of the sexually explicit depictions of children and youths in *Club*, and particularly in *Forum*, is the description of acts of this kind as though they constituted normal sexual behaviour in which children become involved. The situations described and the contents of the letters purportedly received from readers are written in a remarkably uniform and pre-packaged style evincing on the part of the writers a consistently well informed knowledge of these matters and with all of them having the literary ability to provide explicitly graphic depictions of children and youths involved in sexually deviant acts. **In most of these situations, the children and youths are portrayed either as passive novices who are being tutored about sexual behaviour, or more often, they are cast as eager and active participants who willingly have intercourse with adults. These depictions do not accord with the findings of the several national surveys undertaken by the Committee.**

At least one inescapable inference which may be drawn from the depiction of situations in which children are portrayed engaging in sexually explicit behaviour with adults is that these are acceptable and normal learning situations for children. While the publishers of the magazines do not formally endorse this viewpoint in their publications, it is noteworthy that this perspective is not condemned and that the materials described appear in their publications.

Gender of Contributors

Determining the gender of the persons whose letters were published and of columnists and editorial staff members is one means, albeit imperfect, of assessing the circulation market for pornographic magazines. In this regard, a count was made in relation to the sex of these persons.

The gender of some writers and editorial staff members could not be identified; of those for whom this was feasible, a majority were males and approximately a quarter were females. It is unknown how many of the names printed were genuine or fictitious.The text of the letters is of such a consistently uniform style that it appears that considerable editorial assistance may have been

Sex of Writer	Published Letters		Columnists/ Editorial Staff	
	No.	%	No.	%
Male	155	60.8	87	74.4
Female	73	28.6	28	23.9
Unknown	27	10.6	2	1.7
TOTAL	255	100.0	117	100.0

rendered. In light of the fact that all of the 11 pornographic magazines are primarily intended for the market in the United States, and that in quite a few instances where correspondents lived was not specified, this source of information does not provide a reliable means for determining what proportion of the readers may be Canadians. There is no indication that a checking procedure is adopted with respect to confirming the identities of persons writing letters to these magazines.

Advertisements

In the content analysis of the advertisements contained in the magazines reviewed, a distinction was made between 'general' and 'sexually oriented' items. The former category included items such as liquor, automotive goods, men's cologne, tobacco products and electronic equipment, while the latter category subsumed sexually oriented items, such as: telephone sex; listing of pornographic magazines, films and videotapes; and sexual aids and accessories. Specific items referred to in the advertisements were identified and tabulated. This procedure was adopted since a single advertisement could list several items. A further distinction made was whether the items could be purchased in retail outlets or could only be obtained by mail.

The magazines' advertisements listed a total of 840 products. The proportional distribution of general and sexually oriented items varied widely between different magazines. On average, two in three advertisements (67.9 per cent) were sexually oriented ranging from 4.6 per cent in *Playboy* to 92.8 per cent in *Hustler*. The proportion of sexually oriented products advertised in the other magazines was: *Penthouse* (38.3 per cent); *Genesis* (44.4 per cent); *Playgirl* (64.0 per cent); *Gallery* (65.2 per cent); *Oui* (84.5 per cent); *Forum* (89.2 per cent); *Cheri* (90.9 per cent); *Club* (91.0 per cent); and *Swank* (92.4 per cent).

The June, 1983 issue of *Playboy* contained five advertisements for sexually oriented products, four of which were for 'in-house' products (i.e., relating to the magazine itself), and the fifth advertised books with titles such as the *100 Best Opening Lines* and the *Shy Person's Guide to a Happier Love Life*. In contrast, over nine in 10 products advertised in *Hustler* dealt with sexually oriented items, such as telephone sex, pornographic matter and sexual accessories.

The 'general' products advertised in *Hustler*, all of which could only be obtained by mail, included items such as caffeine stimulants, pseudo-drugs, hair restoratives and a tear-gas revolver.

Table 53.3

Types of Sexually Oriented Products Advertised in Eleven Pornographic Magazines: 1983

Type of Sexually Oriented Product Advertised	No.	%
Sold at Retail Outlets		
• Telephone sex	166	29.1
• In-house advertisements	33	5.8
• Films, videotapes	3	0.5
• Condoms	2	0.3
• Pornographic magazines	2	0.3
Mail Order Products		
• Pornographic books, magazines	74	13.0
• Sexual aids	51	9.0
• Films, videotapes	42	7.4
• Catalogues	34	6.0
• Clubs, hotlines to meet other persons	30	5.3
• Sex appeal enhancement drugs, lotions	28	4.9
• Slides, photographs	26	4.6
• Condoms	19	3.3
• Lingerie	16	2.8
• Penis enlarger	12	2.1
• Seduction aids	11	1.9
• Love dolls	5	0.9
• Sex jokes	4	0.7
• Audio cassettes	4	0.7
• Film processing	2	0.3
• Sex games (cards)	2	0.3
• Female contraceptives	1	0.2
• Sex letters	1	0.2
• Sexual self-improvement exercises	1	0.2
• Fetishism items (e.g., worn underwear)	1	0.2
TOTAL	570	100.0

In its review, the Committee found that there was a direct correlation between the variety and explicitness of sexual depictions in the photographs and text of these magazines, and the types of products being advertised. An instance of this was advertisements for telephone sex in which a customer is invited to pay for a sexually explicit telephone conversation with a woman. In *Club*, for example, there was a full page colour advertisement of a nude female model who is parting the labial lips of her vulva with her fingers. The accompanying caption reads: "I'd like to show you the position that I love best that reveals the most of my PINK FLESH . . . I know you'll call".[32]

The magazines having the most advertisements for telephone sex with a woman were: Hustler (63); Club (34); Oui (28); Swank (21); and Cheri (19). In comparison to the magazines having none or fewer of these kinds of advertisements, those that had the highest proportion were also those having proportionately more sexually explicit depictions in the photographs and text constituting the substance of the magazines.

Pornographic magazines and books were the second most frequently advertised product in the issues reviewed. Some of the titles listed were:

- The Transsexual Phenomenon ("Girls with hugh cocks, studs with big boobs")
- Women Who Love Animals
- Shaved Review ("close-ups of shiny pussies . . . all shaved and clean")
- Milk ("huge milky tits")
- Girls Who Eat Cum
- Up the Ass
- Big Brown Jugs
- Mixed Meat

The wide assortment of sexual aids advertised included items such as vibrators and anal intruders. In Chapter 51, *Importation and Seizure*, it was found that only a relatively small proportion of the items seized were films and audio-visual cassettes. One measure of the incremental growth in the popularity of these types of pornographic materials is provided by their listing in the advertisements of the 11 magazines. **If only the pornographic matter listed for audio-visual films and cassettes, magazines and books, and photographs and slides is considered, then of the 145 such items advertised, about a third (31.0 per cent) were films and videotapes. As noted elsewhere in the Report, the market for these products can be expected to expand sharply as audio-visual equipment becomes cheaper and is more widely purchased.**

Advertisements Featuring Children and Youths

Of all the advertisements listing sexually oriented products, one in 10 (10.0 per cent) focussed in one way or another on youths. While the words, child, boy or girl are not used and no ages are specified, the listing of these advertisements which unmistakably identify youths reflects the perception of advertisers of the widespread appeal of having sexual activities with or between young females. Male youths are referred to in only three listings. One in six (17.5 per cent) of the advertisements refers to incest or incestuous behaviour.

Unlike the depiction of other sexually oriented products in the advertisements printed in these magazines, those having an emphasis on youth are seldom accompanied by photographs. Those having pictures are smaller than

Table 53.4

Types of Sexually Oriented Products Featuring Youths Advertised in Eleven Pornographic Magazines: 1983

Title of Item Advertised	Format	Magazine
After School Suck Off	Film	Hustler
All You Can Suck Mom	Film	Hustler
Babyface Nymphos	Magazine	Hustler
Bosum Cunt (in which Young Tina arrives to babysit and gets a complete education in cocksucking and fist-fucking)	Film	Hustler
Candid Cheerleaders	Photograph	Hustler
Cheerleaders	Film	Hustler
Cheerleader Gang	Film	Hustler
Cheerleader Suck Off	Film/Magazine	Hustler
Cherry Bustin	Film	Hustler
Cherry Poppin	Magazine	Hustler
Chubby and Tubby Gals (all under 20 years)	Magazine/ Photograph	Hustler
Class of '69	Film	Hustler
Cock Crazy Coed	Film/Magazine	Hustler
Coed Cocksucker	Film	Hustler
College Girls Vacation	Film	Penthouse
Creamy Virgin Lips	Film/Magazine	Hustler
Dynamic Duos (including an older man/younger girl)	Book	Swank
Experience with Virgins	Book	Club
First Cum	Film	Hustler
First Fuck	Film	Hustler
First Time Fuckers	Magazine	Hustler
Forbidden Sexual Fantasies (including Chapters on . . . Families)	Book	Swank
Foxy (See . . . an older man enter a little shaver)	Book	Swank
Golden Showers Sister	Magazine	Hustler
Hand Job (in which Seka shows her young sister how to suck, fuck and stroke a stiff cock)	Film	Hustler

Table 53.4 *(Continued)*

Types of Sexually Oriented Products Featuring Youths Advertised in Eleven Pornographic Magazines

Title of Item Advertised	Format	Magazine
Her First Dick (a Little Suck Off Magazine)	Magazine	Hustler
High School Memories	Book	Penthouse
Incest Expose	Book	Club
It's So Wet Daddy	Film	Hustler
Little Hot Panties (in which her hot pussy and wet panties make a perfect playground)	Film	Hustler
Mama's Hot Mouth	Film/Magazine	Hustler
1001 Erotic Nights (in which a fisherman seduces two nymphet daughters of a noble-woman)	Video	Swank
Palace of Pleasures (including naughty schoolboys)	Book	Forum
Peach Fuzz Perverts	Magazine	Hustler
Pom Pom Girls (young looking model depicted)	Magazine	Hustler
Pottie Pussies	Film/Magazine	Hustler
Sailor and Babysitter	Film	Penthouse
Sexual Knowledge (in which explicit, intimate, photographs expose the very personal details of teenage sex, orgasm, puberty, masturbation, exotic positions, oral sex). The accompanying photograph depicts two nude youths and a child.	Book	Club
Shaved Chicks (including . . . smooth & slick young girls)	Book	Swank
Six Cock Coed	Film	Hustler
Slick (including young, hairless sweeties . . . wild little shavers)	Book	Oui
Sorority Sex	Film	Hustler
Sorority Sucking (a Little Suck-Off Magazine)	Magazine	Hustler
Sorority Sweethearts	Video	Swank
Stepsisters	Book	Forum
Sucking Sister (young looking model depicted)	Magazine	Hustler

Table 53.4 *(Concluded)*

Types of Sexually Oriented Products Featuring Youths Advertised in Eleven Pornographic Magazines, 1983

Title of Item Advertised	Format	Magazine
Suck-Off Student	Film	Hustler
Sugar Daddy's Darling	Film	Hustler
Swedish Chickies (We have what's Forbidden in U.S.A.). Mailing address given is in Sweden.	Film/Magazine	Swank
Taboo (including family sex: mom, dad, sis and brother)	Book	Oui
Talk Dirty To Me, Part II (in which John seduces the teenage daughter of one of his ladyfriends)	Video	Swank
Teen Lover	Audio	Club
Teenage Dessert	Video	Club
The Younger the Better	Video	Club
Virgin Rapture	Audio	Hustler
xxx Fairy Tales (including Goldilocks, Cinderella, Jack and the Beanstock)	Book	Swank
Young and Hot Nymphs	Book	Club

average and are reproduced in black and white. Of the 57 titles, 56 listed mailing addresses in the United States.

Whether the pornographic matter being advertised was genuine child pornography (i.e., actually featuring children) is unknown. There is no doubt, however, that at the very least, it was pseudo-child pornography; the number of advertisements involved suggests that there is a sizeable market for matter of this kind. Over a half of these items (52.6 per cent) were available in the form of films and/or videotapes. Matter of this kind was typically more expensive than the sexually oriented magazines and books being advertised.

Summary

The content analysis of the photographs, text and advertisements of single 1983 issues of 11 nationally distributed magazines indicates that there was extensive depiction of sexually explicit behaviour and acts in these publications. In general, the depictions given in the text were more varied and explicit

than those portrayed in photographs. There was a progression from photographs and text to advertisements involving the depiction of children and youths. In the photographs, few references were made to youths. In the text of the magazines, 3.0 per cent of the sexually explicit descriptions portrayed children and youths with the ages of the children being specified in some of the articles. Ten per cent of the sexually oriented advertisements in one way or another featured children and youths.

On the basis of this content analysis, it is evident that an operational definition of some of the salient features of pornography can be developed, one which is based on the listing of the portrayal of specific types of sexual behaviour and acts. A definition incorporating the elements documented could serve as the basis for the framing of statutes whose purpose is to limit the accessibility of matter of this kind to children and youths.

As documented in the following chapter, while it was found in a nationally representative sample that Canadians were divided in relation to whether accessibility to pornography by adults should be restricted, there was considerable unanimity that children and youths should not be exposed to the types of sexually explicit depictions described in the findings given in this chapter.

References

Chapter 53: Contents of Pornography

[1] All magazines, except for *Club*, were obtained for the June, 1983 issues. In May, 1983, the June issue of *Club* was unavailable and the July, 1983 issue was used in the content analysis. The magazines included were:

(1) *Cheri*, Volume 7, Number 11, June, 1983 (Canadian edition); (2) *Club*, Volume 9, Issue 6, July, 1983 (Canadian edition); (3) *Forum*, Volume 12, Number 9, June, 1983; (4) *Gallery*, Volume 11, Number 6, June, 1983; (5) *Genesis*, Volume 10, Number 11, June, 1983; (6) *Hustler*, Volume 9, Number 12, June, 1983 (International Edition); (7) *Oui*, Volume 12, Number 6, June, 1983; (8) *Penthouse*, Volume 14, Number 10, June, 1983; (9) *Playboy*, Volume 30, Number 10, June, 1983; (10) *Playgirl*, Volume 11, Number 1, June, 1983; and (11) *Swank*, Volume 30, Number 5, June, 1983.

[2] Audit Bureau of Circulation. *Circulation Statistics*, 1981.

[3] *Penthouse*, reported estimate.

[4] Audit Bureau of Circulation, *op.cit.*

[5] Hustler, *op.cit.*, "Love Slave", pp. 86-95.

[6] Club, *op.cit.*, reported estimate.

[7] Audit Bureau of Circulation, *op.cit.*

[8] Club, *op.cit.*, p. 4.

[9] Oui, *op.cit.*, pp. 12-16.

[10] Hustler, *op.cit.*, pp. 56-57.

[11] Oui, *op.cit.*, pp. 47, 49.

[12] Club, *op.cit.*, p. 42.

[13] Forum, *op.cit.*, pp. 64-69.

[14] Penthouse, *op.cit.*, pp. 29-30.

[15] Swank, *op.cit.*, p. 91.

[16] Oui, *op.cit.*, p. 22.

[17] Forum, *op.cit.*, p. 46

[18] Cheri, *op.cit.*, p. 81.

[19] Oui, *op.cit.*, pp. 6-7.

[20] Penthouse, *op.cit.*, p. 16.

[21] *Ibid.*, p. 20.

[22] Club, *op.cit.*, p. 5.

[23] Swank, *op.cit.*, p. 72.

[24] Hustler, *op.cit.*, p. 104.

[25] Club, *op.cit.*, p. 40.

[26] *Ibid.*

[27] Forum, *op.cit.*, pp. 78-79.

[28] *Ibid.*, p. 106.

[29] *Ibid.*, p. 94.

[30] *Ibid.*, pp. 85-86.

[31] *Ibid.*, p. 90.

[32] *Club*, op.cit., p. 99.

Chapter 54

Circulation, Accessibility and Purchase

In accordance with its Terms of Reference, the Committee reviewed the issue of the accessibility of pornography to children and youths. The sources of information assembled were: a review of reported and available circulation statistics for publications audited by the Audit Bureau of Circulation; an accessibility study of the display of pornographic retail outlets in a number of cities across Canada; and a component of the National Population Survey which dealt directly with the buying habits and opinions concerning pornography of a nationally representative sample of Canadians. This chapter presents findings obtained from these sources.

For purposes of this analysis, the working definition of pornography that was adopted, included:

1. Magazines referred to as: girlie, adult, softcore, sophisticates or men's magazines. They are characterized by: a glossy cover page, a male or female in nude or semi-nude stances, and bold typeface announcing contents inside of a sexual nature. The contents have male and female nude and semi-nude photographs.

2. Booklets 5" x 7" that have a glossy cover page and bold-type printing announcing stories or erotic letter exchanges dealing exclusively with sexual themes. They typically contain written text plus a few photographs.

While the findings of this chapter show that there is an enormous distribution of pornographic matter across Canada and that many Canadians have bought pornography at least once during their lives, reliable information is extremely scarce when it comes either to investigating the pornography trade on a national basis, or of learning about Canadians who buy these materials. In this regard, the present review of the distribution, accessibility and purchasing habits of Canadians would appear to be without precedent in Canadian experience. Despite the great size of this market, the findings clearly show that a majority of persons believe that there should be an age limit in relation to the purchase of pornography.

Audit Bureau of Circulation

The Committee received the co-operation of the *Audit Bureau of Circulation* (A.B.C.) which is believed to be the only repository of information possessing factual information concerning the audited circulation of major publications. The information made available by the A.B.C. provided a basis for estimating changes in the extent, volume and regional distribution of sales from 1965 to 1981, as well as the minimal market value of the pornography business in Canada.

The A.B.C. is a non-profit agency established by periodical publishers, advertisers and advertising agencies as an instrument of self-regulation for the publishing industry. The Bureau's specific functions include: to prepare and issue standardized statements of circulation and other information reported to it by the member publishers; to verify the figures contained in these statements by means of an auditor's examination of the publishers' records; and to distribute this information, without editorial commentary. The A.B.C. disseminates circulation figures for 132 magazines and farm publications and 1900 United States and Canadian daily and weekly newspapers. Approximately three-quarters of all circulation of print media available to advertisers in the United States and Canada are reported according to A.B.C. standards. Since circulation figures provide the basis for determining the advertising rates of various publications, the A.B.C. provides an essential service to publishers and prospective advertisers.

The Board of the A.B.C. is constituted to ensure that purchasers of advertising have majority representation. Of the 33 Board members, 11 are advertisers and seven are representatives of advertising agencies (representation also includes three magazines, eight newspapers, two business publications, one farm publication, and the director of one Canadian periodical publication). The A.B.C.'s reports are prepared twice annually. Publishers submit figures indicating their total sales for each month and their average circulation for the six month period. The publishers also submit geographic analyses of total paid circulation of each magazine for a one month period of their choice (that is, a breakdown of the circulation in specific geographic areas for the selected month).

Although the A.B.C. proved to be an indispensable resource for the Committee's research, the findings provided must be interpreted in recognition of certain limitations. The A.B.C.'s records only provide circulation figures for "adult" magazine titles having the largest circulation, and thus, its records by no means represent a comprehensive listing of the circulation of all pornographic magazines. In addition, the list of publications whose circulation is reported by the A.B.C. has changed from time to time and contains no French language titles.

A.B.C. figures were available for six adult magazines in 1965, for seven in 1970, for 10 in 1975 and for 12 in 1980. The increase over time in the number

of reported publications is attributable to the increase in the number of pornographic magazines capable of attracting significant advertising revenues. Few sexually explicit magazines carried substantial amounts of advertising in 1965. With the passage of time, there has been a steady increase in the number of companies willing to place advertisements in certain pornographic magazines and a comparable growth in the number of "adult" magazines deemed sufficiently "acceptable" to attract advertisers. Today, more publishers of pornographic magazines need to establish advertising rates, and hence, more of them are having their circulation figures audited by the A.B.C. A total of 17 different adult magazine titles appears in the A.B.C.'s listings between 1965 and 1981.

Changes in Number and Content: 1965-81

The Committee contacted magazine wholesalers and distributors for information concerning the number of "adult" magazine titles on the market in 1965. In the judgment of these informants, no more than about 30 different pornographic magazines were available at that time, including such titles as: Ace, Escapade, Esquire, Fling, For Men Only, Gem, Gent, Jem, Male, Mayfair, Men, Men's Adventure, Mister, Nugget, Playboy, Rogue, Stag, Stud and Swank. Of these publications, only three have survived intact, while two have been revamped significantly.

Police sources estimate that at present there are several hundred different "adult" magazine titles available in Canada. This information was confirmed in part by the findings obtained in the National Accessibility Survey. Persons completing the questionnaire for that study were asked to list up to 20 pornographic magazine titles being sold at each retail outlet examined. A total of 540 different titles was documented (Table 54.1).

Table 54.1

Pornographic Magazine Titles Distributed in Canada: 1982-83

– A –	All Man	Beaver Hunt
Ace	All Natural Poses	Bedside Advisor
Action films	Auto Buff	Beef Cake
Adam	– B –	Big Boobs
Adam Choice		Big Book
Adam Classics	B, B & B	Big Bosoms
Adam Film World	Babe	Big Breasts
Adelina	Baby Face	Big Breasts Plus
Adult Cinema	Babydolls	Big Brown Jugs
Advisor	Bachelor	Big Bucks
Aggressive Women	Bad Girl	Biker Lifestyle
Alive	Ball Busters	Bi-Swinger
All Canadian Honey	Ballsy Babes	Bitches and Boots
		Black Beauties

Table 54.1

Pornographic Magazine Titles Distributed in Canada: 1982-83 (*Continued*)

Black Flash
Black Tarts
Blacktress
Blast Off
Blonde and Hard
Blondes
Blondes and I
Blue Collection
Blueboy
Bobbie Prizes
Body Probe
Body Shop
Bondage
Bonder
Boobs
Boobs, Busts and Bazooms
Bottoms Up
Bra Babes
Bra Busters
Bronc
Bronks
Brutes
Buf
Bumper Parade
Busting Out
Busts, Bigger and Better
Bust Orgy
Bust Parade
Bust Plus
Busy Bodies
Butch
Butts 'n Buns

– C –

California Boys
Canadian Key
(the) Canadian Connection
Candid
Caper
Caribbean Black Heat
Carling
Carnival
Cathy
Cavalier
Cavalier Yearbook
Celeb
Celebrity Skin
Centerspread
Champagne
Cheating
Cheri
Cherry
Chic
Chic Letters
Chick Licks
Chocolate Pussy
Choice
Chubby Cheeks
Cinema
Clothesdick
Club
(The Best of) Club
Club International
Cockade
Cocks
Cock Sure
Cocktails
Coloured Cuties
Companion
Conquered
Continental
Couples
Couples Today
(Best of) Couples
(Best of) Couples Letters
Cover Models
Creamy Virgins

– D –

Dapper
Day Bird
Depths of Desire
Detective
Des Hommes..Des Reves
Digest
Digest Kinks
(the Best of) Digest
Do Me
Dollhouse
Dominated and Diapered
Downtown Mama
Dreams
Dude

– E –

Easy Rider
Eclat De Rire
Ecstasy
Ekanaa o
Elite
Encore
Erection Collection
Eros
Eros — Porn Stars
Eroscope
Erotic Adventure
Erotic Film
Erotic Film Guide
Escape
Escapade
Escort
Exclusive
Exotics
Explore
Expose
(the Best of) Expose
Exotica
Extra Nepio iko

– F –

Family Affairs
Fanny
Fanny Club
Fantasy
Fantasy Register
Feedback
Female Fantasies
Female Flesh
Female Mimics
Femme
Femmes de Paris
Fiesta
Film World
First Hand
Fit
Flare
Fling
Flings: D-cup Contest
Flings Fantasy
Forum
Forum Blue
Forum Letters
Forum Lifestyles
Forum Red
(the Best of) Forum
Fox
($) Foxes
Foxette
Friends and Lovers
Friends Network
Front Door Detective
Fun and Games

– G –

Gallery
Game
Gay
Gay is Beautiful
Gem
Genesis
Genesis, Girls, Girls
(the Best of) Genesis
Genitals
Gent
Gent Annual
Gentlemen's Companion
(the) Girl Next Door
Girls, Girls
Girls on Girls
Golden Girl
Golden Guys
Good Humor
Gymnos

– H –

H & E
Hang Outs

Table 54.1

Pornographic Magazine Titles Distributed in Canada: 1982-83 (*Continued*)

Hara Kiri
Hard
Hard Rocks
Harlots in Harness
Harvey
He and She
Heartthrob
Heavy Metal
Hero
High Heels
High School
High Society
Holiday Special
Hollywood Sexy
Honey
Honey Pies
Hooker
Hooker Handbook
Hot Ass
Hot Blondes
Hot Buns
Hot Fun Sister
Hot Panties
Hot Picks
Hot Rods
Hot Shot
Hot Spots
Hot Stuff
Hot Virgin
(the) Hot New Game
Houre Douces
Howto
Hub
Human Advisor
Human Digest
Hustler
Hustler Sex Play
Hutch

– I –

Images Sexuelles
In Touch
I.T. (In touch for men)
International
International Chesty Organ
International H & E
International Harvey
International Sex-ploitation
Intimacy
Intimate Acts
Intimate Letters
Iron Horse

– J –

Jammon
Journal of Love (the)
Joy Stickers
Just Great Legs

– K –

Kazanobae
Key (the)
Kinks
Kinky Letters
Knack
Knave
Knight
Knockers and Nipples

– L –

Late Night Extra
Leg Review
Leg Show
Legomania
Legs, Boobs and Lingerie
Les Girls
Lesbian Action
Lesbo Lust
Letters
Letters Magazine
Liberated Lovers
Lick'n Promise
Limbo
Line and Form
Lipstick
Live
Love
Love At Touch
Love Collection
Love Guide
Lovebirds
Lovebirds Encyclopedia
Loverboy
Lovers
Lovers Fantasies
Lui
Lusty Ladies

– M –

Macho
Madame X
Make it
Male
Man Alive
Man's Action
Man's World
Mandate
Manhatton
Mayfair
Mayflower
Men
Men of Action
Men Only
Mink
Misfits
Miss Tits
Misstress
Modern Screen
More Than a Handful
Motorcycle Women
Movie X-rated
Mud Wrestler

– N –

National Collection
National News
Nationwide Swingers
Naughty, Butt . . .
New Direction
New Man and Woman
New Swingers (the)
Nous
Nude
Nugget
Numbers
Nymphet

– O –

Off Limits
Office Party Lust
OH AYPO
Olympus
Options
Oral Sex Digest
Orgy Girls
Original Fox
Oui
Oui Letters
Over Daddy's Knee

– P –

P.G.
P.M.
P.7.0.
Pain
Paragon
Park Lane
Partner
Party Girls
Penthouse
Penthouse Calendar
Penthouse Forum
Penthouse Variations
(Best of) Penthouse
(Best of) Penthouse Letters
(the Girls of) Penthouse
Person to Person
Pick-Up
Pictorial
Piece Makers
Pillowtalk
Pillowtalk Booklet
Pink
Pixie

Table 54.1

Pornographic Magazine Titles Distributed in Canada: 1982-83 (*Continued*)

Photo
Photo Selection
Platinum
Play Bird
Play Guy
Playbirds Continental
Playboy
Playboy Advisor
Playboy Album (in French)
Playboy Bunnies
Playboy Business
Playboy Calendar
Playboy Fashion
Playboy-Playmate Collection
Playboy Special Holiday Issue
(the Girls of) Playboy
Playdames
Players
Players Calendar
Playgirl
Playgirl Calendar
Playgirl Cartoons
Playgirl Entertains Sexy Men
Playgirl Pictorial
Playgirl Special Holiday Issue
(the Best of) Playgirl
Playgirl's Best Cartoons
Playgirl's Men of Europe
Playgirl's Portfolio
Playmate Calendar
Playtimes
Pleasure
Pleasure Seekers
Plus
Porn Stars
Pounce
Pretty Girl
Prevue
Private
Private Letters
Private Pilot
Prize Winners
Probe
Pub
Purr
Puss 'N Boots

– Q –

Queen Bees

– R –

Rammer
Rapier
Raven
Real Confessions
Response
Riviera
Rubbing Off
Rustler
Rustler Centerfolds
Rusty

– S –

Satin Dolls
Savage
Scoring
Secret Seduction
Seka
Seka's Calendar
Sensuous Letters
Sex Connection (the)
Sex Play
Sex Secrets of the Sisterhood
Sex Stars
Sex Tapes
Sex To Sixty
Sexe
Sexology
Sexology Today
Sexuelles
Sexy Humour
Sexy Men
Sexy Special
Sexy Starlett
Seyco
She
Show
Silky
Sin Sisters
Sir
Sizzler
Skin Flicks
Skirts Up
Sleeping Tall
Sluts and Slobs
Smile
Smuck
Snatch
Souvenier Portfolio of David
Spankers Delight
Special Edition
Spike Team
Stag
Stag's Golden Girls
Stage
Stallion
Stars
Stiff
Stranger Lovers
Stud
Sugar and Spikes
Super Boobs
Super Cycle
Super Girls
Super Love Collection
Super Male
Super Studs in Drag
Superstars of Sex
Swank
Swap
Swapping Wives
Swat
Sweetcocks
Swing

– T –

Tabu
Talks
Teased, Tormented and Transformed
Teasers
Technique Modern de L'amour (les)
Teens, Tits and Twats
Tender Teasers
3 'n 1 (Three in One)
Tiny Cunts
Tip Top
Tit World
Titers
Titillating Experience
Tittes
Titties
Toilet Graffiti
Tomorrow's Man
Topside
Torrid Bitches
Torso
Touch
Transexual Bonanza
Transsexuals
Trio
True Police
Turn-On
Turn-On Letters
TV in Rubber

– U –

Ultra Erotic (Gourmet Edition)
Union
Unite
Uptight Females

Table 54.1

Pornographic Magazine Titles Distributed in Canada: 1982-83 (*Concluded*)

– V –	Virile Man Viva	X-rated Movie Hand-Book X-rated Movies (Review)
Variations (the Best of) Variations Velvet Velvet Erotic Film Velvet Foxes Velvet Portfolio Velvet Talks Velvet Touch Velvet's Vibration Vibrations Video-Sex Video-X Vie Privee	– W –	– Y –
	Wet and Horny White House White Undies Wildcot	Young and Lonely Young and Silky Young Men's Image Young Stuff Young Wet Pussies
	– X –	– Z –
	X-cert. X-rated	Zap

National Accessibility Survey

While 540 titles were listed across Canada, there is no indication that this number is available in any single location. The figure of 540 represents the minimum number available, since the National Accessibility Survey forms contained only 20 spaces in which to list the magazine titles sold at each outlet; because many outlets may have had more than 20 titles for sale, it is possible that a certain number of the more obscure publications were missed. There were 60 "variation titles", (e.g., Playgirl, Playgirl's Portfolio, Playgirl's Men of Europe, Playgirl's Best Cartoons and The Best of Playgirl).

Many of the more explicit or fetish-oriented magazine titles appear only for a single issue. "Volume One, Number Two" is never produced, but in its stead, the same publisher will introduce "Volume One, Number One" of a closely related magazine, one often having a very similar title. This practice is intended to protect the publisher from law enforcement activity. For example, if Customs prohibits the importation of magazine X, the publisher will not suffer a permanent loss, since there will never be a second issue of magazine X; magazine Y, will be introduced the following month, and since its title will not appear on the bi-monthly list put out by the Prohibited Importations Section, it may stand a better chance of clearing Customs than would its predecessor. Similarly, municipal or provincial police officers keeping a lookout for new issues of magazine X, for the purpose of possible obscenity charges, would be unable to find subsequent issues. Of course, the following month, Magazine Y will be discontinued, to be replaced by magazine Z. Since the National Accessibility Survey was conducted over a period of several months, it is certain that the 540 titles listed include many that have since disappeared, and have been succeeded by other titles shown on the list. If a single series of such titles is regarded as representing *de facto*, only a single publication, the total of 540 different magazines may in fact be considerably inflated.

It is evident from the listing given that the A.B.C. does not now report — nor ever has reported — circulations for the full range of pornographic magazines being marketed in Canada. While the number of "adult" titles listed by

A.B.C. has doubled, this growth is not a factor as such of the increase in the actual number of different pornographic magazines being retailed. The increase in the number of titles reported has not come close to keeping pace with the increase in the number of titles available. Further problems arise from the fact that many magazines whose circulations were reported by the A.B.C. at one time have since either ceased to publish or have discontinued using the A.B.C. to set their advertising rates. *Because of these limitations, the A.B.C. figures cannot be used as the basis of a precise calculation either of the total Canadian sales volume for all pornographic magazines, or of the growth in sales over the years.*

The information from the A.B.C. does not provide any indication of changes in the content of adult magazines from the past to the present. This type of information was obtained by examining magazines published in various years. Magazines of the 1950s featured photographs of female models with veiled or exposed breasts. By the 1960s, magazines were available which contained not only exposed breasts but also side profiles of nude men. In the 1970s, publications were introduced onto the market which featured photographs of full frontal and rear nudity of men and women, of the female genital area and (by the late 1970s) of male genitals.

The categories of information available through the A.B.C. were:

1. Price by single copy and subscription on a one, two and three year basis;
2. Total North American sales both by month, and as an average taken over a six month period;
3. Total subscription sales per province (available in most instances);
4. Total newsstand sales per province (available in most instances);
5. Canadian paid circulation by population groups;
6. Canadian paid circulation by county size.

National Per Capita Adult Magazine Sales

The one month circulation figures reported by publishers to the A.B.C., listed for both six month periods of each year (January to June and July to December), were obtained for 1965-81. During this period, circulation figures were reported for 17 different adult magazine titles at different times, but never for more than 12 titles in any one year. In order to determine *per capita* sales figures, it was necessary first to obtain aggregate sales figures for each year. This was accomplished by adding together both semi-annual sales figures for each year. The annual aggregate sales for each listed magazine were thus obtained; for each year, these totals were then added together to yield the annual aggregate sales totals for all adult magazines reporting to the A.B.C. Reference was made to Statistics Canada information to obtain general population figures for each year, as well as figures for the total male population.

Table 54.2

Canadian Per Capita Sales of A.B.C. Audited Adult Magazines: 1965-81[1]

Year	ABC Total Magazine Sales (million)	Total Population[2] (million)	Per Capita Sales	Total Male Population	Per Capita Sales
1965	3,603.8	19,644.0	0.18345	9,879.4	0.3647
1966	4,066.3	20,014.9	0.20316	10,054.3	0.4044
1967	N/R	20,378.0	U/K	10,232.2	U/K
1968	5,128.6	20,701.1	0.24775	10,387.8	0.4937
1969	5,059.7	21,001.0	0.24093	10,530.7	0.4805
1970	5,324.2	21,297.0	0.25000	10,669.1	0.4990
1971	6,255.7	21,568.3	0.29004	10,795.4	0.5794
1972	8,272.5	21,801.3	0.37945	10,900.8	0.7588
1973	11,133.1	22,042.8	0.50505	11,010.4	1.0111
1974	11,441.8	22,364.0	0.51166	11,159.0	1.0253
1975	12,722.2	22,697.1	0.56052	11,313.8	1.1245
1976	11,066.7	22,992.6	0.48132	11,449.5	0.9665
1977	13,525.6	23,272.8	0.58117	11,572.1	1.1688
1978	15,075.5	23,517.0	0.64104	11,670.8	1.2917
1979	15,172.8	23,747.3	0.63892	11,765.5	1.2896
1980	15,375.7	24,042.5	0.63952	11,887.1	1.2935
1981	13,539.9	24,341.7	0.55624	12,068.3	1.1219

Audit Bureau of Circulation.

[1] Statistics Canada figures were obtained to determine: total population; and total male population. Statistics Canada Population figures and Audit Bureau of Circulation figures are quoted in thousands and rounded to the nearest hundred.

[2] Canada. Statistics Canada. *Estimates of Population for Canada and the Provinces, June 1, 1983.* Ottawa, Supply and Services Canada, 1983, p. 13.

N/R = not reported

U/K = unknown

Between 1965 and 1981, there was a sharp increase in sales: the aggregate sales figure for the peak year, 1980, is 4.3 times that calculated for 1965. The fact that aggregate sales decreased between 1980 and 1981 does not necessarily indicate a diminution in or saturation of the market for pornography. The proliferation of new titles likely accounts for a significant increase in sales which would not appear in the A.B.C. records. Also, the emergence of new media (e.g., video-cassettes) to compete with magazines may account for part of the decline. On the basis of these figures alone, it is evident that the pornographic magazine trade has been a high growth industry.

Per capita sales figures also marked striking increases between 1965 and 1981. The overall *per capita* sales (i.e., for the total population of Canada) in 1980 were 3.5 times higher than in 1965. Among all Canadian males, the *per capita* sales also increased by a factor of 3.5 between 1965 and 1980. In interpreting these findings, it is necessary to reiterate the fact that these figures represent an extremely conservative estimate of Canadian consumption of magazine format pornography, since the sales of a sizeable number smaller

circulation publications were not included in the calculations. The total Canadian sales volume for all pornographic magazines is startlingly large: on average, one in two Canadians in 1980, was purchasing one copy of the leading pornographic magazines each year. The purchase of this matter has grown over the years at a rate far exceeding that at which the country's population has increased.

Provincial Circulation

Based on one month sales totals for each six month reporting period, the annual provincial sales totals were obtained by adding together the sales totals for both single months reported in each year, and multiplying this sum by six. This procedure makes the assumption that the sales reported by each publisher for the selected individual months were reasonably representative of the sales volume for each title for the entire six month period, rather than being extensively higher or lower than the average. This assumption may not be justifiable, and may represent a source of error in the total annual provincial sales figures reported in Tables 54.3. The degree of error thus introduced is likely not sufficient to negate the validity of the findings concerning regional sales trends.

Table 54.3

Provincial Per Capita Sales of A.B.C. Audited Adult Magazines: 1966, 1973 and 1980

Province	Per Capita Sales for Total Population of A.B.C. Audited Adult Magazines			Per Capita Sales for All Males of A.B.C. Audited Adult Magazines		
	1966	1973	1980	1966	1973	1980
Newfoundland	0.1135	0.2079	0.2334	0.2215	0.4084	0.4600
Prince Edward Island	0.1398	0.0947	0.3971	0.2740	0.1885	0.7904
Nova Scotia	0.1865	0.4553	0.5475	0.3675	0.9080	1.0996
New Brunswick	0.1274	0.3182	0.3792	0.2522	0.6333	0.7583
Quebec	0.1653	0.2269	0.3169	0.3306	0.4575	0.6415
Ontario	0.2353	0.6570	0.7682	0.4692	1.3139	1.5554
Manitoba	0.2061	0.5699	0.7284	0.4074	1.1416	1.4715
Saskatchewan	0.1614	0.4082	0.7638	0.3137	0.8056	1.5150
Alberta	0.2644	0.8553	1.0967	0.5144	1.6836	2.1649
British Columbia	0.3124	0.7653	0.9650	0.6183	1.5243	1.9404
Yukon	0.6600	0.8390	0.7477	1.1928	1.5495	1.4286
Northwest Territories	0.2360	0.2665	0.9628	0.4307	0.5072	1.8991
TOTAL	0.2032	0.5051	0.6395	0.4044	1.0111	1.2935

Audit Bureau of Circulation. Audited circulation statistics relative to: (1) total Canadian population by provincial distribution; and (2) all males by provincial distribution.

The findings in Table 54.3 indicate the existence of persistent regional differences in the *per capita* sales of the pornographic magazines reported to the A.B.C. The *per capita* sales in Eastern Canada have been markedly lower than in the West. Unfortunately, the A.B.C. does not provide information concerning the circulation of any French-language publication; thus, the patterns are likely to be somewhat distorted. To the extent this was the case, it would be expected that the *per capita* figures of all provinces with large francophone populations would be disproportionately low. In this regard, however, Manitoba, the Western province with the largest French-speaking population, recorded significantly higher *per capita* sales rates in each of 1966, 1973 and 1980 than did New Brunswick. This fact suggests that the gradient of sales from East-to-West is a real phenomenon, notwithstanding the non-inclusion of information concerning French-language magazine sales.

The gap between the highest and lowest provincial *per capita* sales widened between 1966 and 1980. The findings on provincial *per capita* sales confirm those given concerning the high level of growth across Canada in the recorded sale of pornographic magazines between the 1965 and 1980. In all jurisdictions except two (Quebec and the Yukon), the *per capita* sales of magazines reporting to the A.B.C. at least doubled, and in many instances, tripled, or even quadrupled. The lower rate of growth in *per capita* sales for Quebec may be a product of the non-inclusion of information concerning the circulation of French-language publications.

Sales Value of Pornography

A.B.C. information sheets provide the *per* issue newsstand price for each magazine. These price figures may be misleading, however, because of differences between newsstand prices and subscription prices. Some of the magazines listed underwent price changes during either of the six month periods, but these variations have been taken into account in determining the sales value of each magazine title. The dollar value of each magazine was calculated by multiplying the number of magazines sold by the per issue price. For only 12 of the several hundred pornographic magazine titles being sold in Canada in 1980, the estimated sales value was $41,389,264.36.

National Accessibility Survey

In order to obtain information concerning the accessibility of pornography to children and youths, the Committee settled on the expedient of a survey in which volunteer participants across the country completed questionnaires concerning the display and accessibility of adult magazines in various retail outlets. One questionnaire was completed for each retail outlet visited. Because the Committee relied upon the voluntary assistance of a large number of volunteers, the survey was kept as brief and simple as possible. The questionnaire

Table 54.4

Sales Value of 12 A.B.C. Audited Adult Magazines: 1980

Magazine	June 1980 (thousand)	Price ($)	Total ($)	December 1980 (thousand)	Price ($)	Total ($)
Cheri	254.9	2.50	637,250.00	270.2	2.75	743,050.00
Chic	195.1	2.95	575,545.00	136.9	2.95	403,855.00
Club	235.1	2.95	693,545.00	280.8	2.95	828,360.00
Gallery	340.9	2.25(4) 2.95(1) 2.50(1)	820,991.00	312.5	2.50	828,025.00
Genesis	135.9	3.00	407,700.00	141.6	3.00(3) 2.75(3)	407,100.00
Hustler	587.2	2.95	1,732,240.00	551.3	3.25(1) 2.95(5)	1,653,900.03
Oui	411.1	2.50	1,027,750.00	286.9	3.00(1) 2.50(5)	741,158.33
Penthouse Forum	374.7	1.75	655,725.00	303.8	1.75	531,650.00
Penthouse	3,111.3	2.75	8,556,075.00	2,870.1	2.75	7,892,775.00
Playboy	2,037.6	2.75	5,603,400.00	1,436.6	2.75	3,950,650.00
Playgirl	338.1	1.95	659,295.00	329.5	2.25	741,375.00
Swank	222.7	2.75	612,425.00	210.9	3.25	685,425.00
TOTAL	8,244.6		21,981,941.00	7,131.1		19,407,323.36

Audit Bureau of Circulation. June 1980 figures represent the average sales for six months January 1980 to June 1980; December 1980 figures represent the average sales for the six months July 1980 to December 1980. A number in brackets (following the price for that six month period) indicates the number of months that the magazine sold for that price. Total sales value of 12 titles for 1980 is: $41,389,264.36.

consisted of one page of questions with an accompanying page of instructions and definitions. (The working definition of pornography used was previously noted).

The questions asked in the survey related to the nature of the store, the number of adult magazine titles being offered for sale, the mode of display for such magazines, the visibility and accessibility of such items to children and the presence or absence of signs prohibiting youths from buying or browsing through the adult magazines. The types of retail outlets targeted for the survey included confectionery, smoke, variety, drugstores, milk, department, airport, train station, hospital and general bookstores, but excluded so-called "adult" bookstores.

In order to assure the practicability of the survey, pilot studies were conducted prior to enlisting the participation of volunteers across the country. At this stage, a total of 117 stores was visited in most parts of Canada. The results indicated the feasibility of undertaking a national survey, and in this regard, the Committee contacted a number of organizations seeking volunteers willing to participate in the collection of information. The Committee warmly acknowledges the assistance afforded, primarily rendered by academic institutions in all parts of the country. A total of 1091 retail outlets in 23 towns and cities were surveyed in the National Accessibility Survey. In all but three communities, either all retail outlets, or a sample survey of these, was undertaken of those identified as selling newspapers, magazines or books.

Policies of Periodical Distributors of Canada

The *Periodical Distributors of Canada* (P.D.C.) is an organization comprising 39 member companies across the country that employ an estimated 2,000 persons. The P.D.C. estimates that its members are responsible for the distribution in Canada of about 90 per cent of periodicals and paperback books of all types. The P.D.C. "can state with authority that not only do its members not distribute hardcore pornography, but that hardcore pornography from other sources is not generally available at the average neighbourhood newsstand, cigar, or variety store or other retail outlets throughout Canada".[1] A number of independent jobbers and wholesalers not belonging to the P.D.C. operate in various parts of the country and these do not necessarily adhere to P.D.C. policies and guidelines.

The P.D.C.'s official policies concerning adult periodicals are:[2]

> . . . .each Member Firm hereby acknowledges the social desirability of selective display of Adult Reading Matter in retail outlets. Each Member Firm undertakes to use its good offices to encourage retail outlets to at all times display adult reading matter with restraint in order to restrict exposure to children, as well as to adult members of the community who do not wish to avail themselves of such reading matter;

> ... not withstanding the fact that Member Firms have no authority to assume the responsibility of deciding what may properly be published or read by Canadians, each Member Firm hereby pledges itself to the interpretation of Canadian community standards by establishing categories of Adult Reading Matter, as for example:
>
> > One, Adult Reading Matter depicting non-violent human sexuality shall be classified as "Restricted" and recommended only for selective retail display.
> >
> > Two, other Adult Reading Matter which from time to time exceeds the tolerance of contemporary community standards shall be classified as "Unacceptable" for distribution.

The P.D.C. states that member companies encourage retailers to employ restraint in displaying adult publications, to place such matter on upper racks, away from the floor or cash registers and not to sell to minors. The P.D.C. further notes that publishers of adult magazines are aware that certain types of covers will offend some persons, and for this reason, most of these publishers have ceased to produce magazines with nudity displayed on the covers.

Ontario-based members of the P.D.C. make use of an independent advisory body, the Ontario Advisory Council, in deciding whether individual issues of certain periodicals are, or appear to be, acceptable according to contemporary community standards (i.e., whether they are legally obscene).

Location of Retail Outlets

Of the retail outlets surveyed, over half (53.9 per cent) were in commercial areas of towns and cities, two in five (43.0 per cent) were located in residential areas, and the remainder were either sites such as recreational centres or industrial areas. The types of outlets surveyed were:

Type of Store	Per Cent (n=1091)
Bookstore/newspaper	7.1
Restaurant/cafe	0.3
Department store	3.7
Drugstore	14.8
Gift/card shop	1.9
Neighbourhood grocery store	10.6
Newsstand	7.8
Supermarket	3.3
Tobacco store/smoke shop	5.6
Variety store	44.9

Of the 1091 retail outlets surveyed, 881 or 80.8 per cent sold at least one or more adult magazines or some form of pornographic matter. The remainder of the findings are given in relation to the outlets selling these materials. Before

these results are presented, it is pertinent to note the general etymological usage of the word, *accessibility*. As this word has come to be commonly used, it refers to that which is capable of being used or of being reached. In relation to the meaning typically attributed to the idea of *accessibility*, the findings given pertain to pornography which potentially could be used or reached by children and youths, but it does not mean that children may have actually seen or purchased pornography. Findings about the purchasing habits of Canadians were obtained in the National Population Survey; these are given following the presentation of the results of the National Accessibility Survey.

Display of Pornography

Of the four in five retail outlets (80.8 per cent) selling some form of pornography in 23 towns and cities across Canada, about a third (35.5 per cent) displayed 20 or more items; some had hundreds of items. A majority of the outlets sold considerably fewer adult magazines, with these including: under five items (21.6 per cent); five to nine items (23.2 per cent); 10 to 14 items (11.9 per cent); and 15 to 19 items (7.8 per cent). Most of the various retail outlets surveyed carried some form of pornography, most commonly, glossy full-size adult magazines having the widest circulation across Canada.

Over half of these pornographic items were located further than 10 feet from the sales counter (52.8 per cent). In only about one in six outlets was the pornography located either at the sales counter or placed within it. In about one in three outlets (35.1 per cent), the materials were situated within 10 feet of the sales counter.

Most of the outlets carrying pornographic matter had full size glossy adult magazines (77.3 per cent) and one half (50.2 per cent) carried small booklet-type magazines (some outlets carried both types of pornography). In four in five outlets (80.2 per cent), these 'adult' magazines were either displayed separately from popular magazines, or with them, but grouped together.

Display of Adult Magazines	Per Cent
Separate from popular magazines	26.0
Included with popular magazines, but adult magazines grouped together	54.2
Interspersed with popular magazines	14.3
Other, not reported	5.5
TOTAL	100.0

One third of the adult magazines (32.8 per cent) were either placed on the flat bottom shelf or displayed within three feet of the floor. About half were located at an eye level of between four and five feet from the floor. Thus, about six in seven pornographic magazines (85.4 per cent) were readily accessible to most young adolescents and a sizeable proportion was well in reach of younger children.

Height from Floor	Per Cent
On ground or bottom shelf	15.3
2 – 3 feet from floor	17.5
4 – 5 feet from floor	52.6
TOTAL (5 feet or under)	85.4

The findings of the National Accessibility Survey indicate that the policy guidelines of the *Periodical Distributors of Canada*, for the most part, were either unknown to, or were being ignored by, the retail outlets surveyed from Newfoundland to British Columbia. In these outlets, comparatively little restraint was being observed in the display of adult magazines and other forms of pornography.

About nine in 10 retail outlets surveyed had no signs prohibiting children or youths from buying or browsing through adult magazines.

Signs Prohibiting Children and Youths From:	Yes	No	Not Reported
	Per Cent	Per Cent	Per Cent
Buying Adult Magazines	3.2	88.9	7.9
Browsing through Adult Magazines	5.6	86.0	8.4

Information was obtained in the survey about how the adult magazines on the front rows of display shelves were shown. The style of display may range from a magazine's cover being fully exposed, partially covered, having only the title showing, to being fully hidden. The findings of the National Accessibility Survey clearly indicate that a sizeable majority, about four in five, of the retail outlets either fully exposed or only partially covered the adult magazines on their display shelves. In only a small proportion of these retail outlets was it found that the titles of adult magazines were shown; it was rare for them to be fully covered. In about one in six outlets (16.9 per cent), some or all adult magazines were enclosed with a clear plastic cover or a paper binding.

Display Covers of Adult Magazines	Large Glossy Adult Magazines	Small Booklet-type Adult Magazines
	Per Cent	Per Cent
Fully exposed	45.5	63.1
Partially covered	33.2	19.2
Only titles shown	19.7	13.4
Fully covered	1.6	4.3

The findings of the National Accessibility Survey will not surprise Canadians living in most parts of the country. Their own experience will attest

to the findings' validity. A great majority of the retail outlets surveyed carried pornographic magazines, most openly displayed adult magazines and there were few apparent restrictions in relation to their accessibility by children and youths. As noted in the review of the circulation figures, the distribution and sale of pornography have become a large-scale enterprise in Canada, one almost exclusively of foreign origin but generating earnings for many thousands of Canadians.

The survey's findings also show that the well-intentioned policy guidelines of the *Periodical Distributors of Canada* have been ineffectual in instilling a sense of restraint or prudence by retailers in the display of adult magazines or pornography. **Pornographic matter is not just accessible, but readily accessible, to children and youths in all parts of Canada. As documented in the findings of the nationally representative sample of the Canadian people, this practice stands in sharp contrast with the expressed wishes of most Canadians.**

National Population Survey

The design of the National Population Survey and how it was conducted are described in Chapter 6, *Occurrence in the Population*. Included in this statistically representative survey of the Canadian population were questions concerning: the purchase of pornography; the types of matter bought; when the first purchase had been made; opinions concerning the display of pornography in retail outlets; whether pornography had ever been shown to the person against his or her will; and if he or she had known anyone who had been harmed by exposure to pornography.

In the pretest of the survey, special attention was paid to whether the word 'pornography' was clearly understood. The working definition given preceding the questions asked which was similar to that used in the National Accessibility Survey was that pornography included 'sex magazines, books and video tapes or cassettes'. On the basis of previously conducted research surveys, it appeared that the meaning of the word was generally well understood by persons from whom information was sought; in the case of the present survey, this was also found to be true. In the pretest, only one individual questioned what pornography meant, and in the national survey, only four persons raised similar concerns. None had any doubt that the word referred to sex magazines or comparable matter. The findings from the National Population Survey complement those of the Audit Bureau of Circulation and the National Accessibility Survey. Information from each of the three sources clearly indicates that a sizeable number of Canadians have bought pornography.

Age of First Purchase

About three in five males (59.4 per cent) and about one in three females (30.8 per cent) said that they had bought pornography at least once during their lives. Conversely, about one in three males (36.6 per cent) and two in three females (62.9 per cent) had never purchased any form of pornography. A small handful of respondents (5.1 per cent) did not answer this question.

Table 54.5

Canadians Buying Pornography: Age of First Purchase

Age When First Bought Pornography	Males (n=1002)	Females (n=1006)	Total (n=2008)
	Per Cent	Per Cent	Per Cent
Under 7 years	—	—	—
7 – 11 years	0.5	—	0.3
12 – 13 years	1.9	0.3	1.1
14 – 15 years	7.7	1.5	4.6
16 – 17 years	14.4	4.9	9.6
18 – 20 years	21.2	8.7	15.0
21 and older	13.7	15.4	14.5
Never bought pornography	36.6	62.9	49.8
No reply	4.0	6.3	5.1
TOTAL	100.0	100.0	100.0

National Population Survey.

The purchase of pornography is not an issue which is usually openly discussed by Canadians. It is evident, however, that when persons are asked questions about these issues and given the assurance that their replies will be kept confidential, many are prepared to provide information. There is no previous baseline for findings of this kind for Canada.

In its review of the national circulation statistics of a small number of widely distributed adult magazines, the Committee was informed by knowledgeable periodical distributors that the audience for pornography was almost exclusively male in composition and that buyers were typically men between 21 and 49 years-old. This belief is also widely held in other quarters. The survey's findings indicate that these assumptions are not wholly tenable. Only three in five males stated that they had ever bought pornography, and in contrast with commonly held beliefs, so had one in three females.

A distinction may be drawn between the purchase of a product and its subsequent use. A product may be used by, or exposed to, persons other than or in addition to, the one who buys it. It is unknown how many of the females who stated that they had bought pornography had purchased it for their own use, or for the use of male or female persons other than themselves. However, the same line of thought is equally applicable to male purchasers of pornography. By the same token, the findings of the National Population Survey do not indicate what proportion of males or females who stated that they had never bought pornography, may have in fact read, viewed or used pornographic

materials purchased by someone else. These materials are now so widely distributed that this type of situation is not just a possibility but an occurrence whose proportions are as yet undocumented.

The findings in Table 54.5 indicate that about a third (34.9 per cent) of the males first bought pornography at the age of 18 or older, while a quarter (24.5 per cent) had made their initial purchase at an earlier age. Assuming that in most males, pubescence has ended by age 18, it appears that the initial purchase of pornography by males was a post-pubescent experience more often than not (it was a post-pubescent experience for the three in five (58.8 per cent) males surveyed who had ever bought pornography). The finding suggests that the purchasing of pornography is not necessarily a phenomenon associated with the normal process of sexual maturation in Canadian males (i.e., it is not explicable solely as a "phase" that males go through as part of their growing up). This conclusion is even more strongly applicable in the case of the female respondents. Only about one in 15 females (6.7 per cent) had purchased pornography when under 18 years of age, and of the females who had ever bought pornography, one in five (21.6 per cent) had made her first purchase when she had been under age 18.

While the findings show that a majority of persons who had ever purchased pornography had done so when they were age 18 or older, a substantial proportion of first purchasers had been children and youths.

Age of First Purchase	Males (n=595)	Females (n=310)
	Accumulative %	Accumulative %
Under 7 years	—	—
7 – 11 years	0.8	—
12 – 13 years	4.0	1.0
14 – 15 years	17.0	5.8
16 – 17 years	41.2	21.6
18 – 20 years	77.0	50.0
21 and older	100.0	100.0

Excluding persons who had never bought these materials, one in six males (17.0 per cent) and one in 17 females (5.8 per cent) had been under age 15 when they had made their first purchase of pornography. These proportions rose respectively to two in five males (41.2 per cent) and one in five females (21.6 per cent) who had made such purchases before they had reached age 18. For these persons, the purchase of pornography had started relatively early in life, and as shown in the findings of the National Accessibility Survey, there were relatively few restrictions governing the display of adult sex magazines in retail outlets across Canada.

Types of Pornography Purchased

Magazines constituted by far the most popular medium of pornography from the standpoint of purchase. All of the males and seven in eight females (87.1 per cent) who had ever purchased pornography had bought adult magazines. These figures also suggest that a sizeable proportion of the persons surveyed who had bought pornography had purchased more than one form of it (generally magazines and one or more other types of these materials). Half of the males (50.4 per cent) and one in six females (15.8 per cent) stated that they had purchased pornographic magazines several times or often. Thus, there were proportionately more recurrent purchasers of pornographic magazines than of any other type of pornography.

A substantial proportion of the respondents buying these materials had purchased pornography in book form. About two and a half times as many of the men had purchased pornographic magazines as had bought adult books (the proportions were about the same for men and women who stated that they had purchased these materials several times or often).

While only a relatively small proportion of persons said that they had purchased pornographic video-tapes or cassettes, this finding should be viewed in light of the fact that when the survey was conducted the home video-tape media were still new to the Canadian marketplace, and that playback equipment was relatively expensive. Also, it is unknown how many illicit copies were made of rented or purchased pornographic video-tapes; such copies could increase the actual circulation of this form of pornography to a level far greater than that indicated by the findings in Table 54.6. Given these facts, it is remarkable that almost one male respondent in 10 (9.6 per cent) reporting having purchased a pornographic video-tape and that one in 15 (6.6 per cent) had made such a purchase several times or often. One in 10 females (9.7 per cent) who had ever purchased pornography had bought an adult tape or cassette.

The findings indicate that adult magazines were the most frequently purchased pornographic commodity, but that a sizeable demand also existed for other forms of pornography which were less likely to have been as openly displayed as adult magazines. The Committee did not obtain information about the means of distribution of these other items, such as adult pornographic books, which are seen to reach a large audience if the findings of the National Population Survey are projected to the buying habits of all Canadians.

Views Concerning the Retail Display of Pornography

The findings in Tables 54.7 and 54.8 present a study in contrast between the way Canadians perceived the conditions under which pornography was sold, and the situation that they believed should exist. A majority of all respondents (62.3 per cent) stated that, typically, local stores displayed pornographic magazines in a non-segregated manner. About one in five (20.4 per

Table 54.6

Types of Pornographic Matter Purchased

Type of Pornography Purchased	Males			Females		
	Proportion of All Males in the Sample (n=1002)	Proportion of Males Who Have Bought Pornography (n=595)	Purchased Pornography Several Times or Often*	Proportion of All Females in the Sample (n=1006)	Proportion of Females Who Have Bought Pornography (n=310)	Purchased Pornography Several Times or Often*
	Non-Accumulative Percentages					
Magazines	59.4	100.0	50.4	26.8	87.1	15.8
Books	23.7	39.8	19.0	13.6	44.2	7.7
Video Tapes/ Cassettes	9.6	16.1	6.6	3.0	9.7	1.6
Other Types	5.3	8.9	4.0	2.4	8.1	1.7

National Population Survey.

*Percentage of total sample

Table 54.7

Display of Pornography in Local Stores as Reported by Canadians

Usual Display of Pornography in Local Stores	Males (n=1002)	Females (n=1006)	Total (n=2008)
	Per Cent	Per Cent	Per Cent
Mixed with other magazines	61.2	63.3	62.3
Displayed separately	21.2	19.8	20.4
Behind blinders or screens	3.5	4.3	3.9
Kept out of sight/under counter	3.1	4.4	3.7
None sold locally	6.5	6.5	6.6
No reply	4.5	1.7	3.1
TOTAL	100.0	100.0	100.0

National Population Survey.

cent) believed that the standard retail practice was to maintain a segregated display of pornographic magazines, while 7.6 per cent said that such publications were sold in such a way as to restrict their visibility, either by means of placing them behind blinders, under counters or out of sight.

The findings of the National Accessibility Survey and the National Population Survey are remarkably comparable in relation to the display of adult sex magazines and other pornography in retail outlets.

Display of Pornography in Retail Outlets	National Accessibility Survey	National Population Survey
	Per Cent	Per Cent
Located with or mixed with other magazines	68.5	62.3
Displayed separately	26.0	20.4

In the former survey, it was found that the majority of pornography sold in retail outlets was located in the display of other types of magazines. In the latter survey, the views expressed by respondents indicate that pornography has come to be widely perceived as a visible fact of social existence in Canada. On the basis of the surveys' findings, there can be no doubt that it has.

The findings in Table 54.8 attest to the existence of considerable dissatisfaction with the perceived *status quo*. Of all respondents, over half (54.6 per

cent) either favoured restricted visibility of pornography in local stores, or opposed any sale of such material. Only about one in six (17.7 per cent) felt that a mixed display of magazines was acceptable, while about a quarter (24.8 per cent) preferred a segregated display of pornography.

Table 54.8

Opinions Concerning How Pornography Should be Displayed in Local Stores

How Pornography should be Displayed	Males (n=1002)	Females (n=1006)	Total (n=2008)
	Per Cent	Per Cent	Per Cent
Mixed with other magazines	23.2	12.7	17.7
Displayed separately	31.2	19.1	24.8
Behind blinders or screens	10.7	7.7	9.1
Kept out of sight/under counter	12.1	20.8	16.7
None should be sold	20.6	36.1	28.8
No reply	2.2	3.6	2.9
TOTAL	100.0	100.0	100.0

National Population Survey.

While the perception of males and females concerning the display of pornography was remarkably similar, there was no such concurrence of opinion when they were asked how they felt pornography should be displayed in stores. Women were considerably less tolerant of the open display of pornographic materials than were men: two in three (64.6 per cent) females favoured visually restrictive modes of display (i.e., behind blinders or screens, kept out of sight or under the counter) or opposed the sale of pornography altogether, while only two in five (43.4 per cent) of the males' responses fell into these categories. A third (36.1 per cent) of the women felt that no pornography should be sold as compared to a fifth (20.6 per cent) of the men. While this discrepancy of opinion is wide, a substantial proportion of the respondents of both sexes stated that there should be no sale of pornography in local stores.

In the course of its work, the Committee identified an apparent contradiction between the behaviour and views of Canadians concerning pornography. While most Canadians tended to denounce current practices involving the display of pornography, they nonetheless purchased it extensively. On the issue of how pornography should be shown in retail outlets, the findings of the National Population Survey indicated that about two in five tolerated the open display of pornography, and respectively, one in four either wished to have its visibility restricted or for none to be sold. There was far greater agreement, however, concerning the age at which persons should be permitted to purchase pornography.

Age Limit on the Purchase of Pornography

The persons contacted in the National Population Survey were asked at what age they believed a person should be permitted to purchase pornography. About half (49.0 per cent) felt either that there should be no sale of pornography or that such material should be sold only to persons aged 21 or older. Five in six persons (83.3 per cent) were opposed to permitting the sale of pornography to persons under the age of 18. Unconditional freedom of purchase was favoured by a relatively small proportion of the persons surveyed — only 2.5 per cent.

Table 54.9

Opinions on the Ages at which Persons should be Permitted to Buy Pornography

Age at which a Person should be Permitted to Buy Pornography	Males (n=1002)	Females (n=1006)	Total (n=2008)
	Per Cent	Per Cent	Per Cent
21 and older	20.1	28.1	24.3
18 and older	41.0	28.3	34.3
16 and older	13.1	7.1	9.9
14 and older	1.3	0.7	1.0
12 and older	0.3	0.2	0.2
Persons of all ages	4.5	1.8	3.1
None should be sold	17.9	30.7	24.7
No reply	1.8	3.1	2.5
TOTAL	100.0	100.0	100.0

National Population Survey.

A more restrictive approach towards the selling of pornographic materials was advocated by a larger proportion of the females than of the males: 58.8 per cent of the females stated that pornography should be sold only to persons over the age of 21 or should not be sold at all, while 38.0 per cent of the males' responses fell into these two categories. On the other hand, a larger proportion of the males (41.0 per cent) than that of the females (28.3 per cent) considered 18 an appropriate age for persons to assume the right to purchase pornography.

In the National Population Survey, it was found that a large majority (77.3 per cent) of the respondents who did not oppose the sale of pornography altogether felt that only post-adolescent purchasing (i.e., over age 18) should be permitted. Among the male respondents, three in four (74.4 per cent) of those not opposed to the selling of pornography favoured a post-adolescent age limit, while four in five (81.4 per cent) of the comparable group of females

advocated such a limit. This discrepancy, while not large, may reflect the fact that a larger proportion of males than females had made initial purchases of pornography below the age of 18. What is more remarkable than this modest difference is the high level of agreement about the need to protect children and youths from exposure to pornography. This finding is clear and unequivocal.

Summary

The findings of the three surveys present a complementary description of the pornography trade in Canada. Between 1965 and 1980, the sales of the pornographic magazines reported to the Audit Bureau of Circulation increased by 326.7 per cent. By comparison, the population of Canada grew by 22.4 per cent. The growth in adult magazine sales was at least 14.6 times the growth of the population (there can be no doubt that the rate of growth was far greater than that, considering the increase in the number of magazine titles being offered for sale).

Clear and persistent regional differences occur in the distribution and sales volume of pornographic magazines. These disparities not only persisted, but actually became more marked between 1966 and 1980. This finding may reflect any of a number of social, economic or legal phenomena, including:

1. Differences between the public attitudes prevailing in different parts of the country towards pornography.
2. Variation from region to region in the cost of living and in the size of the average person's disposable income (i.e., in different regions, fewer or greater numbers of persons may have the funds to purchase pornographic magazines).
3. Different practices on the part of distributors and retailers (particularly in response to public pressure groups).
4. Differences in enforcement practice from region to region.
5. Differences in the habits of readers (e.g., in the number of persons between whom a certain copy of a magazine will be passed before being discarded).

It is unknown which of these factors may account for the regional sales patterns that emerge from the circulation statistics. However, the ascending east-to-west sales volume gradient corresponds roughly to the pattern of R.C.M.P. and Customs seizures of pornography (see Chapter 51). This correspondence indicates that the actual consumer demand for pornography appears to be greater in the West than in the Maritime provinces.

One hitherto known but undocumented fact that received clear and ample verification from the Committee's examination of the statistics of the Audit Bureau of Circulation, is that the sale of pornography is big business in Canada. The commercial value of only 12 major titles was over $41 million in 1980. If the sales of all other available titles only equals or slightly exceeds

those of the 12 listed publications — a plausible supposition — then the retail value of pornographic magazines likely generates a gross revenue of at least $100 million *per annum*. This $100 million figure excludes the sale of pornographic pocket books, films, videotapes, "sex aids", and the admission fees charged for commercially exhibited motion pictures.

The main findings of the National Accessibility Survey were the documentation of several hundred pornographic magazines being sold in retail outlets across Canada and that most of this matter was openly displayed. Much of this material was readily accessible to children and youths in relation to magazine covers being readily visible, being placed with other magazines and in terms of height from the floor. The findings indicate that the policy guidelines of the Periodical Distributors of Canada concerning the display of adult reading matter were not being observed by a majority of retail outlets carrying these materials. In the National Population survey, three in five males and about one in three females stated that they had bought pornography at least once. Of persons having bought pornography, two in five males and one in five females had initially purchased these materials before age 18.

On the issue of the display of pornography in retail outlets, there was considerable agreement that an age limit be established in relation to when persons might purchase pornography. Over three in four persons (77.3 per cent) who did not oppose the sale of pornography altogether felt that only persons age 18 and older should be permitted to purchase this matter.

References

Chapter 54: Circulation, Accessibility and Purchase

[1] Periodical Distributors of Canada *Statement of Policy "Respecting Adult Reading Matter"*. June. 1976; and "Adult Reading Matter: Censorship vs. Freedom of Choice", March, 1980.

[2] *Ibid.*

Chapter 55

Associated Harms

Much public and scientific controversy surrounds the question of what effects, if any, pornography has on individuals and on society. A wide range of moral, behavioural, attitudinal and emotional effects have been attributed to exposure to pornographic materials. Many producers of pornography proclaim their product to be an educational tool and a liberating force for sweeping away the repressive and joyless puritanical attitudes of the past. This view is sharply contested by many parents who are deeply concerned by the possibility that their children may obtain misleading or distorted information about love, sex and relations between men and women through contact with sexually explicit matter. Pornography has been condemned on the grounds that it fosters misogyny and socially repressive attitudes, lowers self-esteem and self-awareness, and acts as a catalyst in promoting violence. Researchers, often drawing upon incomplete or seriously flawed sources of information, are divided about whether exposure to pornography is associated with increased aggressiveness and a rise in the incidence of sexual offences.

In undertaking its review of the research literature on sexual offences available for Canada, the Committee found no empirical studies whose findings had been directly grounded upon the experience of a sizeable number of individuals. None of these studies dealt directly with the potential harmful effects of exposure of pornography to children. The studies completed included: non-empirically grounded assessments; a limited number of personal accounts; statistical reports surveying trends in crime and the distribution of pornography; the results of social psychological experiments, typically involving college students, involving the simulation of exposure to these materials; and briefs or reports drawing heavily, but selectively, upon studies undertaken in other nations.

In seeking to assess the extent to which children and youths were known to have been exposed to pornography and whether they had been affected or harmed by such exposure, the Committee considered the findings of two major national inquiries undertaken in the United Kingdom and the United States and included questions on these issues in the national surveys which were conducted. In particular, the National Population Survey was used as a means of seeking to obtain information from a representative sample of Canadians about

their experience as children with pornography and their identification of the consequences resulting from exposure to these materials. These findings are given in this chapter.

American and British National Inquiries

A substantial body of research pertaining to the effects of exposure to pornography was reviewed in two national inquiries appointed respectively in the United States and the United Kingdom. The *United States Commission on Obscenity and Pornography* which reported in 1970 undertook a comprehensive review of available research and commissioned studies dealing with these issues.[1] The *British Committee on Obscenity and Film Censorship*, which reported in 1979, provided an updated review of research completed between the publication of the American report and the submission of its own appraisal.[2]

The reports of these two major national inquiries were in agreement on several issues. These points were: the varying and vague definitions of pornography; the inconclusiveness of the limited number of studies having empirical findings in documenting whether there is a causal link between exposure to pornography and persons being harmed by such exposure; and the absence of studies documenting the experience of children who were exposed to these materials.

In relation to harms associated with exposure to pornography, the main conclusion of the *U.S. Commission* was:

> "In sum, the empirical research has found no evidence to date that exposure to explicit sexual materials plays a significant role in the causation of delinquent or criminal behaviour among youths or adults. The Commission cannot conclude that exposure to erotic materials is a factor in the causation of sex crime or sex delinquence."[3]

Based on its review of the research drawn upon by the *U.S. Commission*, critiques of that report and subsequently completed studies, the 1979 *British Committee* reiterated the conclusions of the earlier inquiry.

> "... we make the comment that the effect of re-examining the original studies in light of a hostile critique of the Commission's conclusions ... is simply to make one adopt rather more caution in drawing inferences from the studies undertaken. It is still possible to say ... that there does not appear to be any strong evidence that exposure to sexually explicit material triggers off anti-social behaviour. We would add only that this is consistent with what we learned from the clinical experience of those experienced medical witnesses we consulted."[4]

In reaching these conclusions, both national inquiries shredded most of the existing research on pornography. Much of the available research was based on the experience of small and atypical groups such as prison inmates or college

students. None of the research reviewed by these inquiries provided an assessment of the long-term effects of exposure to pornography. Social psychological experiments in which small groups were exposed to sexually explicit material and the reactions of the subjects noted were dismissed "as an unilluminating and unreliable way of investigating complex behaviour"[5]. In this regard, the 1979 *British Committee* concluded:

> "Since criminal and anti-social behaviour cannot itself, for both practical and ethical reasons, be experimentally produced or controlled, the observations must be made on some surrogate or related behaviour . . . The fundamental issue in this field concerns *the relations that hold between reactions aroused in a subject by a represented, artificial, or fantasy scene, and his behaviour in reality* . . . We can only express surprise at the confidence that some investigators have shown in supposing that they can investigate *this* problem through experimental set-ups in which reality is necessarily replaced by fantasy."[6]

Both national inquiries cited the absence of clinical studies documenting the harms of exposure to pornography. Each report also considered, and set aside as spurious, those studies in which the distribution of pornography was correlated with changes in the incidence of reported rates of criminal activity. Such studies were dismissed on the grounds that there was no direct empirical documentation of harms to persons at the individual level, and that no consideration was given in these types of reports as to why a minority of persons exposed to pornography either should be harmed or become sexually deviant when the majority having this experience was apparently immune to these effects.

Notably, the two national inquiries failed to identify research dealing with the effects of exposure of pornography to children. In a minority report appended to the 1970 *U.S. Commission*, it was noted that:

> "While the Commission in their Final Report state '. . . [there] is no evidence that exposure to or use of explicit sexual materials play a significant role in the causation of social or individual harms such as crimes, delinquency, sexual or non-sexual deviancy, or severe emotional disturbance . . . or plays a significant role in the causation of delinquent or criminal behaviour among *youth* or *adults*', they do not mention that there was *not a single* experimental study, longitudinal study, or clinical case study involving youth."[7]

The 1979 *British Committee* concluded that while the effects of pornography were widely seen as being dangerous to children:

> ". . . for obvious reasons children have not been used in experimental work on exposure to pornography, and we heard no evidence of actual harm caused to children . . . [8] [in discussions with clinicians] . . . we were struck by the fact that none of them was able to tell us of a case of which they had experience in which there was evidence of a causal link between pornography and a violent sexual crime."[9]

On the basis of its review of the reports of the American and British national inquiries and available Canadian studies, the Committee concluded

that, due to the absence of adequate empirical research on the effects of pornography on children, there was insufficient evidence provided by previous studies to show that children were or were not harmed by exposure to sexually explicit materials.

Unwanted Exposure to Pornography

In undertaking its research, the Committee adopted a grounded approach in which information was sought directly from Canadians about their experience of having been exposed to pornography as children and whether they or someone whom they knew had been harmed. The persons contacted in the survey were also asked if they had ever been exposed to pornography against their will and how old they were if this had happened to them.

The findings obtained by the Committee indicate that Canadians identified several types of harms associated with exposure to pornography. These harms were:

1. The corruption of moral and social values.
2. The altering of personal values and behaviours.
3. Associated sexual assaults and attendant physical injuries sustained.

Table 55.1

Unwanted Exposure to Pornography by Age

Age at Which Unwanted Exposure to Pornography Occurred	Sex of Person Shown Pornography			
	Males		Females	
	Number	Per Cent	Number	Per Cent
Under age 7	2	3.0	4	7.3
7 — 11 years	4	6.1	5	9.1
12 — 13 years	11	16.9	11	20.0
14 — 15 years	12	18.5	8	14.5
16 — 17 years	9	13.9	6	10.9
18 — 20 years	12	18.5	11	20.0
21 years and older	9	13.9	5	9.1
Not Reported	6	9.2	5	9.1
TOTAL	65	100.0	55	100.0

National Population Survey. Total denominator = 1002 males, 1006 females.

In presenting these findings, the Committee recognizes that there are serious limitations inherent in the sources of information drawn upon. The information obtained was based on recollections of events occurring in the past, different ideas of what constituted pornography were likely involved, the reports given about the experience of persons known to the informants may have been inaccurate, and the number of persons citing such incidents was small. However, in light of the other types of privileged information provided to the Committee for which extensive replies were given, there is no reason to believe that a sizeable number of persons would have chosen to withhold information about their unwanted experiences as children with pornography. As well, the graphic accounts given, when taken in conjunction with cases investigated by the police, leave no doubt that incidents of unwanted exposure to children of pornography occur, and that in some of these situations, such exposures are associated with children having been sexually assaulted.

One in 17 persons (6.0 per cent) in the National Population Survey said that he or she had been exposed at least once to pornography against his or her will; one in 15 (6.8 per cent) said that he or she knew someone who had been harmed by such exposure.

The findings in Table 55.1 list the ages when the first unwanted exposure to pornography occurred. Acts of this kind had happened about a fifth more often to males than to females. When the first unwanted exposure to pornography had occurred, one in 11 males (9.2 per cent) and one in six females (16.4 per cent) had been 11 years-old or younger. About half (47.5 per cent) having an experience of this kind had been under age 16.

Impact on Social Values

Approximately two in three persons contacted in the National Population Survey added written comments in addition to replying to the questions asked. In relation to the issue of pornography, the majority of their written comments focussed upon the impact of pornography in affecting the moral and social values of Canadian society. The following statements are representative of the views expressed.

- *30 year-old farmer.* "Pornography affects the moral fibre of our society. Sex and its abuses bombard us too much. The moral values of young people are compromised".
- *50 year-old utility foreman.* "Some of my fellow workers are preoccupied with pornography. It really affects their attitudes towards women. This material does not display reality — models are used to portray fantasy".
- *24 year-old computer analyst.* "Pornography has made some of my close friends have a lack of a sense of what's right or wrong. It's an invitation to crime —it is contrary to a sane mind".
- *35 year-old school board member.* "People are led to believe that abusive, exploitive sex is normal and enjoyed by all".

- *40 year-old foster mother.* "Pornography definitely causes rape and molestation to children. Men are excited. As a woman, I feel degraded by some of their remarks".
- *29 year-old union organizer.* "Pornography degrades women and children — it makes them sex 'objects'. It makes men have no respect for sex — they expect to behave like the pictures they see in the magazines".

None of the replies focussing on the negative effects of pornography in this category identified persons known to the respondents who had specifically been harmed by exposure to pornography.

Impact on Personal Values

In addition to general opinions given concerning pornography, two categories of harms to persons were identified by respondents in the National Population Survey. In the first category, persons cited instances either of individuals who were family members, friends or close associates whom they reported had been negatively influenced by exposure to these materials, or they gave personal accounts of how they themselves had been affected in this regard. In the second category, accounts were given in which persons reported that they had been exposed to pornography and that they had subsequently been sexually assaulted by the same person.

In the former category, of the one in 15 persons (6.8 per cent) who said that he or she knew someone who had been harmed by exposure to pornography, about half (47.1 per cent) cited the experience of a family member, friend or close colleague and about an equal proportion (52.9 per cent) gave personal accounts. The most frequently cited harm recounted by persons which had involved family members or friends was the alteration of their values about sexual behaviour.

- *34 year-old public health worker.* "Pornography contains pro-violence, anti-female messages. It changed my ex-husband's attitude towards me. I became more of a thing than a person to him".
- *23 year-old ferrier.* "Pornography encourages sexual promiscuity and deviation. It encourages a pre-occupation with sex. It stimulated my father to lust for other women and to commit adultery. He lost his wife and lost the respect of his family. Now, he is an empty man with nothing of real worth in his life".
- *41 year-old graduate student.* "You should be mature enough to be able to deal with it. My ex-husband wasn't — he became pre-occupied with it".
- *32 year-old salesman.* "I had no adverse effects from buying pornography at 16. My wife was shocked — she had not been exposed to these books before".
- *48 year-old mother.* "Pornography gives young people a false image of sex between grown-ups, especially between parents. It makes no mention of the emotional involvement necessary to make sex meaningful. Seeing

pornography damaged my teenage son (13) — it changed his attitude to girls at a time when he was very vulnerable to peer pressure".

- *32 year-old sales clerk.* "Pornography is an obstacle to having sincere and spontaneous sex. It replaces passion with desire. My husband wants me to practice the sexual acts inspired by seeing pornography".
- *36 year-old mother.* "There are enough crazy people in the world without adding pornography to show children how they are going to grow up. It hurt my son — he doesn't understand sex and thinks what he sees in magazines is normal".
- *34 year-old secretary.* "Pornography leads to over-stimulation, abuse and desensitization. It has made my husband have unreal expectations of me".
- *23 year-old clerk.* "Pornography encourages violence towards women. It made my nephew have a loss of respect for the female sex".

Slightly over half of the persons who said they knew someone who had been harmed gave personal accounts of how their views about sexual behaviour had changed following exposure to pornography. Most of these persons felt that pornography had warped their views about sex, had altered their relations with others, and in some instances, had changed their way of life.

- *21 year-old student* shown pornography at age 13. "My innocence was lost and now I periodically have thoughts I'm ashamed of. It's changed my personality".
- *52 year-old utility engineer* shown pornography at age 17. "Myself. Some warping of thoughts always. Pornography is supposed to somehow make it 'all right'."
- *32 year-old controller.* "Seeing pornography made me get involved in sexual relationships without realizing their consequences".
- *20 year-old camp counsellor.* "I found a number of pornography magazines. I was confused and became terrified of close contact with men. These books ruin the respect of the human body".
- *31 year-old minister* shown pornography at age 11. "Me. Exposure tends to give me very violent and perverted thoughts".
- *38 year-old teacher.* "Pornography gave me an improper view of sex relationships — it affected my personal moral standards".
- *37 year-old economist.* "I was not seriously affected by pornography, but it certainly did harm my attitude to women".
- *27 year-old sawmill worker* shown pornography at age 15. "I was hurt. It causes lusts and perverted thoughts which to me is the same thing as doing them".
- *32 year-old nursing assistant.* "Having seen pornography as a child, it permitted me to continue in an area of my life which was seriously out of perspective".
- *49 year-old nurse* shown pornography at age 11. "It left me with the wrong impression of sex. I consider it to be against decency".

- *21 year-old student.* "Younger people should be kept from pornography so that their sexual perceptions develop in a healthy way. Seeing it distorted my own sexual attitudes and expectations".

The findings given in Chapter 54, *Circulation, Accessibility and Purchase* indicate that slightly less than half (45.1 per cent) of the persons contacted in the National Population Survey reported that they had purchased pornography on at least one occasion. While the purchase of pornography is not synonymous with a person having been exposed to this material, the survey's findings suggest that a substantial number of Canadians at one time or another have been exposed to pornography at least once during their lives. In contrast, one in 15 persons (6.8 per cent) reported knowing someone who in his or her judgment had been harmed; slightly over half of this group (3.6 per cent of all persons in the survey) gave personal accounts in this regard of their own experiences.

The survey's findings shed little light on why some persons but not others may have been harmed by exposure to pornography. In relation to the potential harms of exposure, the findings do not provide a basis upon which to establish the age at which special protection for children may be warranted. In light of the information available, the grounds for reaching this decision must be based on other considerations.

Unwanted Exposure and Associated Assaults

In addition to the reported impact of pornography on the values of Canadian society and the personal values of individuals, a number of respondents in the National Population Survey stated that they had been shown pornography and that they had also been sexually assaulted by the same person. One in 63 persons (1.6 per cent) in the National Population Survey reported incidents of this kind. Proportionately more of these incidents had involved victims who were females (1.9 per cent) than males (1.4 per cent).

The findings given in Table 55.2 show that half of the males (50.0 per cent) and about three in five females (57.9 per cent) who had reported that they had been shown pornography and that they had been sexually assaulted by the same person were under age 16 when the incidents had occurred; only one in four persons having had this experience (24.2 per cent) had been an adult.

In incidents of this kind, about two in five persons (39.4 per cent) had had the sexual parts of their bodies touched. Proportionately, four times as many males (42.9 per cent) as females (10.5 per cent) had experienced oral-genital contacts. Some form of completed or attempted vaginal penetration had been committed against about half of the females, including: attempted vaginal penetration with a penis (21.1 per cent); vaginal penetration with a penis (against two females); and penetration with finger or object (21.1 per cent).

Table 55.2

Reported Incidents of Unwanted Exposure to Pornography Followed by Sexual Assault

Age at Which Reported Unwanted Exposure to Pornography Followed by Sexual Assault Occurred	Sex of Person Shown Pornography and Who Was Sexually Assaulted			
	Males		Females	
	Number	Per Cent	Number	Per Cent
Under age 7	1	7.1	2	10.5
7 – 11 years	—	—	3	15.8
12 – 13 years	2	14.3	5	26.3
14 – 15 years	4	28.6	1	5.3
16 – 17 years	1	7.1	1	5.3
18 – 20 years	3	21.4	2	10.5
21 years and older	3	21.4	5	26.3
TOTAL	14	99.9*	19	100.0

National Population Survey.

*rounding error

Only two persons reporting these incidents had been victims of acts of anal penetration with a penis. Both were males. However, proportionately more males (28.6 per cent) than females (5.3 per cent) had been masturbated.

Since there is limited documentation in the research literature about incidents of this kind, the following personal accounts given by persons in the National Population Survey and the reports of a number of cases investigated by the police documented in the National Police Force Survey serve to illustrate the types of situations in which children and youths were shown pornography and had been sexually assaulted by the same person. In presenting these accounts, it is noted that the proportion reporting such incidents is small and that, in each instance, the exposure to pornography was forced upon the person involved.

- *23 year-old ice arena attendant.* When she was 12, a 17 year-old watchman exposed to her, showed her pornography, fondled her sexually and attempted to rape her. "I did not tell anyone, but I wasn't ready for it. Children are exposed to pornography too early. Sex is not properly explained at home or in school. Boys are encouraged to be aggressive physically and sexually from a very early age".

- *19 year-old student.* Shown pornography at age 10, threatened and experienced an attempted rape by her 68 year-old grandfather. In urging the prohibition of pornography, she wrote: "I feel this way because there

is enough bad things going on in the world today without pornography adding to it — it gives people ideas and this is why crimes happen".

- *34 year-old secretary.* Shown pornography at age seven, threatened and was a victim of both cunnilingus and rape by her 17 year-old brother. "I still suffer from the humiliation of all that happening to me. My self-esteem suffered for years. I am now 34 and am still not over the guilt and trauma".
- *45 year-old hotel clerk.* Between ages 12 and 16, her father exposed himself to her, showed her pornography, sexually fondled her and attempted to rape her. When she was married, she told her husband. "I feel my father could have been helped".
- *26 year-old mother of three children.* This woman reported that when she was 13, her 33 year-old brother-in-law exposed to her, showed her pornography, threatened to have sex with her and fondled her crotch several times. "I lived with my sister and her husband. When she went to bed, if he was drinking, my brother-in-law wanted me to take my clothes off. He had a top management position for a large company. At the time, I didn't know he had done the same thing to another sister. I didn't want to hurt my sister who was married to him".
- *46 year-old educator.* Shown pornography at age four, sexually fondled and masturbated. "It was presented as fun, a game, by a babysitter when I was four. It degenerates a whole population which becomes lax in their way of doing things in everyday life. It had a long indirect affect on me". He told his mother and "the sitter was not recalled".
- *25 year-old waitress.* Shown pornography at age eight by her father who also inserted a finger in her vagina. "I became lost and this was no good for me. It corrupts people's minds — they become perverted".
- *23 year-old truck driver.* Shown pornography at age 15 and had his penis fondled. "It makes the children learn bad things before the good things. It shows a lack of respect for others".
- *50 year-old artist.* Shown pornography at age 12 and was masturbated by a neighbour. "It causes weak-minded people to rape. Some adults become aroused by looking at this. I ran away when it happened".
- *19 year-old attendant.* Shown pornography at age 15, had a finger inserted in her vagina and experienced an attempted rape by school acquaintances. "They wanted me to be or do what they saw in the tapes or magazines. I was not ready for it. I did not tell anyone".
- *41 year-old housewife.* Shown pornography at age six, threatened and raped by her uncle. "Children see pictures, they don't forget and some adults have warped minds when it comes to pornography . . . I was frightened of males. It took years to heal the scars. Happy now".
- *26 year-old lawyer.* Shown pornography at age 12 and was masturbated. "Pornography furthers illicit and illegal sexual activity — I was offended and embarrassed".
- *18 year-old student.* Shown pornography at age 11 and sexually fondled. "The younger generation is becoming more involved in sexual experiences shown in movies and pornography. There is a sexual look in some men's eyes. I'm always on my guard and uneasy".

- *26 year-old mother.* "I do not like to admit that my father enjoyed pornography. He made my sister and me when I was five look at obscene pictures. Until I was 12, he abused us both [oral-genital and oral-anal contacts]. I could not speak of this until much later. My husband is the only person who knows".

- *Six year-old girl.* A parks grounds-keeper approached a six year-old girl and asked her to "shake his pee-pee to get all of the milk out of it". He showed her nude photographs and then masturbated in front of the child.

  When apprehended, he was found by the police to have previously been committed for abnormal sexual behaviour to a provincial mental hospital. He explained he performed these acts "because of pressure building up over a period of time". No charges were laid.

- *Five year-old girl.* Over a period of time until detected by the child's parents, their five year-old daughter had her 15 year-old uncle as her baby-sitter during her parent's absence. He would read a pornographic magazine and then fondle the child's vagina and anus. No charges were laid due to lack of corroboration.

- *14 year-old girl.* Following the separation of this 14 year-old girl's parents, she visited her father during the summer vacation. On her first night at her father's home, he entered her bedroom and gave her a pornographic magazine to read. The next morning, he returned to his daughter's bedroom and "asked her how she had liked the book". He lay down beside her, and while fondling her breasts "remarked that it was better that a father and a daughter had sex". He had intercourse with his daughter three times during her stay with him.

  Although the girl was initially too ashamed to tell her mother, she subsequently confided to an adult who informed the local child protection agency which in turn contacted the police.

- *12 year-old boy.* A 12 year-old boy discovered and read several pornographic magazines in his older brother's bedroom. A few days later, while baby-sitting a neighbour's five year-old son, he started a game of "dickie" with the child. According to the child's account given to the police, the older boy "put his dickie in my mouth and I was to suck it and then I was to put my dickie in his mouth and he was to suck on it".

  No charges were laid. Psychological assessment and counselling were recommended for the 12 year-old boy.

- *Six year-old girl.* A man sitting in a car in an alley called a six year old girl to join him. He showed her a picture of a nude woman in a pornographic magazine, pulled down his trousers and exposed himself. He then asked the girl to touch his penis, which she did, but when he asked her to suck it, she refused. The unidentified offender then drove away.

- *Six and eight year-old boys.* Two brothers, ages six and eight, were playing in a ravine when they were approached by three boys, two of whom were age 10. The older boys showed the younger children pictures in a pornographic magazine and then asked the brothers to fellate them. The older brother refused but the six year-old sucked the penises of both of the 10 year-old boys.

When the boys' mother learned what had happened, she notified the police. The 10 year-old boys were cautioned by the police.

- *Six year-old girl.* A six year-old girl was invited by a 35 year-old man into his apartment where she saw "some barenaked books" which he had left open on the floor near his bed. After playing some disco music, the man told the child to remove her clothing. He fondled the girl's genitals and then had her masturbate him. He threatened her that she should not tell anyone.

  The police, contacted by the girl's mother, seized a number of pornographic magazines. The accused was charged with indecent assault.

- *Six year-old girl.* While she was playing in a park, a six year-old girl was approached by a man in his mid 20s who gave her three pictures depicting lesbian sexual acts. He asked if she wanted to play with his monkey, and when she refused, he grabbed her. After trying to undress her, he ran away.

  Ten days later when she was in her bedroom at night, the girl heard noises and saw the same man looking through the window. He asked her to come out to play. She called her mother who with a male companion immediately searched the grounds. The man was seen leaving. Suspect unknown.

- *11 month-old boy.* A family friend, a 15 year-old boy, was asked to babysit an 11 month-old infant boy. When the parents left, the babysitter took a combination of gravol pills and whiskey in hopes of becoming 'high'. He reported later to the police that previously he had read several hard-core pornographic magazines which portrayed sadomasochistic heterosexual acts. While reading, he heard the baby crying upstairs.

  The baby wasn't hungry and the babysitter decided to give him a bath. The account given the police describes what happened.

  > "I took him into the bathroom and took the diaper off to give him a bath. Before this, I was reading a dirty book. I was feeling horny and I was giving [the infant] a bath and tried to screw him".

  The anal intercourse on the infant resulted in tearing of the sphincter muscle leaving the ruptured tissue protruding from the anus. When the offence was discovered, the youth was placed in a boys' detention centre, pending a juvenile court decision and the commencement of psychiatric treatment.

Summary

On the basis of the findings of the National Population Survey, it is evident that the occurrence of unwanted exposure to pornography may have been experienced by a sizeable number of Canadians, many of whom were children and youths when the incidents took place. In many of these incidents, the persons committing these acts were well known to children or were responsible for

their welfare. One in 63 persons (1.6 per cent of persons in the National Population Survey) reported having been exposed to pornography and also having been sexually assaulted at the time or following the exposure.

As noted previously, these findings are based on recollections of incidents occurring in the past, the definitions of pornography may have varied and the experiences of only a small number of persons are provided. However, in the case of the National Population Survey, the information obtained was derived from a representative sample of the Canadian population. In the Committee's judgment, the incidents reported likely constitute an under-estimate of the occurrence of situations involving exposure to pornography followed by a sexual assault.

The findings of the two national surveys — population and police — indicate that for a number of persons, pornography had served as a stimulus to committing sexual assaults against children. The findings do not elucidate, however, why exposure to pornography may affect some persons, but not others, in this way nor do they indicate the nature of the circumstances in which incidents of this kind are more likely to occur.

While incomplete with respect to many significant aspects of these issues, the findings of the National Population Survey identify some of the dimensions of the harms associated with exposure to pornography, particularly where this was unwanted and had happened to a child. There can be no doubt that the impact of having been shown pornography, or of having been forced to see this matter, was vividly recalled by those persons to whom this had happened when they were children. In this regard, one in 15 persons (6.8 per cent) stated that such exposure had affected his or her views, or those of someone whom they knew well, towards sexual behaviour and their relations with others later in their lives. The long-term moral, psychological and social consequences of these exposures, however, are insufficiently documented in the case studies in relation to the impact of other types of depictions which these persons may have been exposed. There is no evidence in these findings, for instance, that compares the impact of exposure to pornography on a child with that which may result from their having seen scenes on television or movies depicting violence involving physical assault and murder.

A second kind of harm associated with unwanted exposure of children to pornography identified by persons contacted in the National Population Survey is situations in which these materials were shown and a child or youth had been sexually assaulted by the same person. In light of the findings obtained, there is no doubt that such incidents occur. The personal accounts and the cases investigated by the police also identify a third type of harm associated with exposure of children to pornography. In these accounts, a number of children had been threatened or coerced, had sustained physical injuries, or had incurred a risk to their health (e.g., introduction to the use of drugs or alcohol).

The Committee's recommendations concerning the making, distribution, sale and display of child pornography and accessibility by children to pornogra-

phy are given elsewhere in the Report. **The findings given in this chapter concerning the actual and potential harms of exposure to pornography to children support the need for special statutory provisions to afford children better protection. In addition to the reform of the law concerning these issues, more complete documentation is required of the nature of the long-term effects of exposure to children of pornography. Accordingly, the Committee recommends, in conjunction with other means proposed to afford better protection for children, that a comprehensive study be commissioned to consider the long-term effects of exposure to children of pornography, particularly focussing on where it does and where it does not have subsequent negative effects and the factors that distinguish these situations.**

References

Chapter 55: Associated Harms

[1] *United States Commission on Obscenity and Pornography*, New York: Bantam Books, 1970.

[2] United Kingdom. Home Office. *Report of the Committee on Obscenity and Film Censorship*, London: H.M.S.O., 1979.

[3] U.S. Commission on Obscenity and Pornography, *op. cit.*, p. 466.

[4] U.K. Report of the Committee on Obscenity and Film Censorship, *op. cit.*, p. 66.

[5] *Ibid.*, p. 65.

[6] *Ibid.*, p. 65-66, Emphasis in italics added.

[7] U.S. Commission on Obscenity and Pornography, *op. cit.*, p. 487.

[8] U.K. Report of the Committee on Obscenity and Film Censorship, *op. cit.*, p. 88-89.

[9] *Ibid.*, p. 63.

Appendices

Sexual Offences and the Protection of Young Persons (Bill C-53, 1st Session, 32nd Parliament, 29 Elizabeth II, 1980-81)

An Act to amend the Criminal Code in relation to sexual offences and the protection of young persons and to amend certain other Acts in relation thereto or in consequence thereof

First Reading, January 12, 1981

Her Majesty, by and with the advice and consent of the Senate and House of Commons of Canada, enacts as follows:

CRIMINAL CODE

1. Section 2 of the *Criminal Code* is amended by adding thereto, immediately after the definition "clerk of the court", the following definition:

" "complainant" means the person against whom it is alleged that an offence was committed;"

2. Subsection 3(1) of the said Act is repealed.

3. All that portion of subsection 6(1.2) of the said Act preceding paragraph (*a*) thereof is repealed and the following substituted therefor:

"(1.2) Notwithstanding anything in this Act or any other Act, every one who, outside Canada, commits an act or omission against the person of an internationally protected person or against any property referred to in section 387.1 (attack on official premises, etc.) used by him that if committed in Canada would be an offence against that section or section 218 (murder), 219 (manslaughter), 245 (assault), 245.1 (assault causing serious bodily harm), 245.2 (unlawfully causing serious bodily harm), 246.1 (sexual assault), 246.2 (aggravated sexual assault), 247 (kidnapping) or 381.1 (threats against internationally protected persons) shall be deemed to commit that act or omission in Canada if"

4. Sections 17 and 18 of the said Act are repealed and the following substituted therefor:

"**17.** A person who commits an offence under compulsion by threats of immediate death or serious bodily harm from a person who is present when the offence is committed is excused for committing the offence if he believes that the threats will be carried out and if he is not a party to a

conspiracy or association whereby he is subject to compulsion, but this section does not apply where the offence that is committed is high treason or treason, murder, piracy, attempted murder, sexual assault, aggravated sexual assault, forcible abduction, robbery, assault causing serious bodily harm, unlawfully causing serious bodily harm or arson.

18. No presumption arises that a married person who commits an offence does so under compulsion by reason only that the offence is committed in the presence of the spouse of that married person."

5. The headings preceding section 138 and sections 138 to 158 of the said Act are repealed and the following substituted therefor:

"PART IV
PUBLIC MORALS, DISORDERLY CONDUCT AND SEXUAL EXPLOITATION OF YOUNG PERSONS

Interpretation

158. In this Part,

"guardian" includes any person who has in law or in fact the custody or control of another person;

"public place" includes any place to which the public has access as of right or by invitation, express or implied;

"theatre" includes any place that is open to the public where entertainments are given, whether or not any charge is made for admission."

6. Sections 166 to 168 of the said Act are repealed and the following substituted therefor:

"Sexual Exploitation of Young Persons

166. (1) Every one who engages in or procures sexual misconduct with or by a person who

(*a*) is not his spouse and

(*b*) is under the age of fourteen years,

is guilty of an indictable offence and is liable to imprisonment for ten years.

(2) No one shall be found guilty of an offence under subsection (1) if he establishes that

(*a*) at the time the sexual misconduct took place, he was under fourteen years of age; or

(*b*) he is less than three years older than the complainant.

(3) Where an accused is charged with an offence under subsection (1), it is not a defence to the charge that the complainant consented to the sexual misconduct or that the accused believed at the time the sexual misconduct took place that the complainant was fourteen years of age or more.

167. (1) Every one who engages in or procures sexual misconduct with or by a person who

(*a*) is not his spouse, and

(*b*) is fourteen years of age or more and is under the age of sixteen years,

is guilty of an indictable offence and is liable to imprisonment for five years.

(2) No one shall be found guilty of an offence under subsection (1) if he establishes that

(*a*) at the time the sexual misconduct took place he was under sixteen years of age;

(*b*) he is less than three years older than the complainant;

(*c*) he believed at the time of the sexual misconduct took place that the complainant was sixteen years of age or more; or

(*d*) he is less responsible than the complainant for the sexual misconduct that took place.

168. (1) Every one who, being the parent or guardian or having the lawful care or charge of or exercising authority over a person under sixteen years of age,

(*a*) engages in sexual misconduct with or procures or (sic) by that person is guilty of an indictable offence and is liable to imprisonment for ten years; or

(*b*) knowingly permits the sexual misconduct of that person is guilty of an indictable offence and is liable to imprisonment for five years.

(2) Every one who, being the owner, occupier or manager of premises, knowingly permits the premises to be used for the purposes of sexual misconduct involving a person under sixteen years of age is guilty of an indictable offence and is liable to imprisonment for two years.

(3) No one shall be found guilty of an offence under this section if he establishes that he believed at the time the sexual misconduct took place that the complainant was sixteen years of age or more.

168.1 (1) Every one commits incest who, knowing that another person is his blood relative, has sexual intercourse with that person.

(2) Every one who commits incest is guilty of an indictable offence and is liable to imprisonment for ten years.

(3) No person shall be found guilty of incest if he establishes that he acted under restraint, duress or fear of the person with whom he had the sexual intercourse.

(4) In subsection (1), "blood relative" means a parent, child, brother, sister, half-brother, half-sister, grandparent or grandchild.

168.2 (1) Every one who knowingly

(*a*) induces, coerces or agrees to use a person under sixteen years of age to participate in any sexually explicit conduct for the purpose of producing, by any means, a visual representation of such conduct,

(*b*) participates in the production of a visual representation of a person under sixteen years of age participating in any sexually explicit conduct,

(*c*) makes, prints, reproduces, publishes, distributes, circulates or has in his possession for the purpose of publication, distribution or circulation a visual representation of a person under sixteen years of age participating in any sexually explicit conduct, or

(*d*) sells, offers to sell, receives for sale, advertises, exposes to public view or has in his possession for the purpose of sale a visual representation of a person under sixteen years of age participating in any sexually explicit conduct,

is guilty of an indictable offence and is liable to imprisonment for five years or is guilty of an offence punishable on summary conviction.

(2) For the purposes of subsection (1), a person who at any material time appears to be under sixteen years of age shall, in the absence of evidence to the contrary, be deemed to be under sixteen years of age.

(3) Subsections 159(3) to (5) apply, with such modifications as the circumstances require, to a person charged with an offence under subsection (1).

168.3 In any proceeding under this Part, where a court is satisfied that a matter or thing is obscene or is a visual representation referred to in subsection 168.2(1), the court shall order the matter or thing to be forfeited to Her Majesty in right of the province in which the proceedings take place, for disposal as the Attorney General may direct."

7. The said Act is further amended by adding thereto, immediately after section 169 thereof, the following section:

"**169.1** (1) Every one who commits an act of gross indecency with another person is guilty of an indictable offence and is liable to imprisonment for five years.

(2) Subsection (1) does not apply to any act committed in private between

(*a*) a husband and his wife, or

(*b*) persons each of whom is eighteen years of age or more."

8. Section 175 of the said Act is repealed.

9. The definition "offence" in section 178.1 of the said Act is amended by striking out the reference to "79 (causing injury with intent)" where it occurs therein and substituting a reference to "79 (using explosives)", by striking out the reference to "144 (rape)" and "245(2) (assault causing bodily harm)", where it occurs therein and by adding, immediately after the reference to "218 (murder)", a reference to "245.1 (assault causing serious bodily harm), 245.2 (unlawfully causing serious bodily harm), 246.1 (sexual assault), 246.2 (aggravated sexual assault),".

10. Subsection 179(1) of the said Act is amended by adding thereto, immediately after the definition "place", the following definition:

" "prostitute" means a person of either sex who engages in prostitution;"

11. Sections 182 and 183 of the said Act are repealed.

12. Subsections 195(1) and (2) of the said Act are repealed and the following substituted therefor:

"**195.** (1) Every one who

(*a*) procures, attempts to procure or solicits a person to have illicit sexual intercourse with another person, whether in or out of Canada,

(*b*) inveigles or entices a person who is not a prostitute or a person of known immoral character to a common bawdy-house or house of assignation for the purpose of illicit sexual intercourse or prostitution,

(*c*) knowingly conceals a person in a common bawdy-house or house of assignation,

(*d*) procures or attempts to procure a person to become, whether in or out of Canada, a prostitute,

(*e*) procures or attempts to procure a person to leave the usual place of abode of that person in Canada, if that place is not a common bawdy-house, with intent that the person may become an inmate or frequenter of a common bawdy-house, whether in or out of Canada,

(*f*) on the arrival of a person in Canada, directs or causes that person to be directed or takes or causes that person to be taken, to a common bawdy-house or house of assignation,

(*g*) procures a person to enter or leave Canada, for the purpose of prostitution,

(*h*) for the purposes of gain, exercises control, direction or influence over the movements of a person in such manner as to show that he is aiding, abetting or compelling that person to engage in or carry on prostitution with any person or generally,

(*i*) applies or administers to a person or causes that person to take any drug, intoxicating liquor, matter or thing with intent to stupefy or overpower that person in order thereby to enable any person to have illicit sexual intercourse with that person, or

(*j*) lives wholly or in part on the avails of prostitution of another person,

is guilty of an indictable offence and is liable to imprisonment for ten years.

(2) Evidence that a person lives with or is habitually in the company of prostitutes, or lives in a common bawdy-house or house of assignation is, in the absence of any evidence to the contrary, proof that he lives on the avails of prostitution."

13. Section 201 of the said Act is repealed.

14. All that portion of section 213 of the said Act preceding paragraph (*a*) thereof is repealed and the following substituted therefor:

"**213.** Culpable homicide is murder where a person causes the death of a human being while committing or attempting to commit high treason or treason or an offence mentioned in section 52 (sabotage), 76 (piratical acts), 76.1 (hijacking aircraft), 132 or subsection 133(1) or sections 134 to 136 (escape or rescue from prison or lawful custody), section 246 (assaulting a peace officer), section 246.1 (sexual assault), 246.2 (aggravated sexual assault), 247 (kidnapping and forcible confinement), 302 (robbery), 306 (breaking and entering) or 389 or 390 (arson), whether or not the person means to cause death to any human being and whether or not he knows that death is likely to be caused to any human being, if"

15. Subsection 214(5) of the said Act is repealed and the following substituted therefor:

"(5) Irrespective of whether a murder is planned and deliberate on the part of any person, murder is first degree murder in respect of a person when the death is caused by that person while committing or attempting to commit an offence under one of the following sections:

(*a*) section 76.1 (hijacking aircraft);

(*b*) section 246.1 (sexual assault);

(*c*) section 246.2 (aggravated sexual assault); or

(*d*) section 247 (kidnapping and forcible confinement)."

16. Section 228 of the said Act is repealed.

17. Paragraph 242(3)(*b*) of the said Act is repealed and the following substituted therefor:

"(*b*) is guilty of an offence under section 245.2, if serious bodily harm to any person results therefrom; or"

18. Sections 244 to 246 of the said Act are repealed and the following substituted therefor:

"**244.** (1) A person commits an assault when

(*a*) without the consent of another person, he applies force intentionally to that other person, directly or indirectly;

(*b*) he attempts or threatens, by an act or gesture to apply force to another person, if he has, or causes that other person to believe upon reasonable grounds that he has, present ability to effect his purpose; or

(*c*) while openly wearing or carrying a weapon or an imitation thereof, he accosts or impedes another person and begs.

(2) This section applies to all forms of assault, including sexual assault and aggravated sexual assault.

(3) For the purposes of this section, no consent is obtained where the complainant submits or does not resist by means of

(*a*) the application of force;

(*b*) threats or fear of the application of force;

(*c*) fraud; or

(*d*) the exercise of authority.

(4) For the purposes of this section,

(*a*) it is a question of fact whether the complainant consented or not; and

(*b*) consent shall not necessarily be inferred from the fact that the complainant submitted to or did not resist the application of force.

(5) Where a question is raised as to whether the accused believed that the complainant consented to the conduct that is the subject-matter of the charge, the jury shall be instructed, in determining the honesty of that belief, to consider, along with any other relevant matter, the presence or absence of reasonable grounds for that belief.

245. Every one who commits an assault is guilty of

(*a*) an indictable offence and is liable to imprisonment for two years; or

(*b*) an offence punishable on summary conviction.

245.1 Every one who commits an assault that causes serious bodily harm to any person is guilty of an indictable offence and is liable to imprisonment for ten years.

245.2 Every one who unlawfully causes serious bodily harm to any person is guilty of an indictable offence and is liable to imprisonment for ten years.

246. (1) Every one commits an offence who

(*a*) assaults a public officer or peace officer engaged in the execution of his duty or a person acting in aid of such an officer;

(*b*) assaults a person with intent to resist or prevent the lawful arrest or detention of himself or another person; or

(*c*) assaults a person

(i) who is engaged in the lawful execution of a process against lands or goods or in making a lawful distress or seizure, or

(ii) with intent to rescue anything taken under a lawful process, distress or seizure.

(2) Every one who commits an offence under subsection (1) is guilty of

(*a*) an indictable offence and is liable to imprisonment for five years; or

(*b*) an offence punishable on summary conviction.

246.1 Every one who commits a sexual assault is guilty of an indictable offence and is liable to imprisonment for ten years.

246.2 (1) Every one commits an aggravated sexual assault who

(*a*) uses a weapon during or at the time he commits a sexual asssault; or

(*b*) commits a sexual assault that causes serious bodily harm.

(2) Every one who commits an aggravated sexual assault is guilty of an indictable offence and is liable to imprisonment for life.

246.3 (1) Where an accused is charged with an offence under section 166 (sexual misconduct with person under fourteen), 167 (sexual misconduct with person between fourteen and sixteen), 168 (sexual misconduct by parent, guardian, etc.), 168.1 (incest), 169.1 (gross indecency), 246.1 (sexual assault) or 246.2 (aggravated sexual assault), no corroboration is required for a conviction and the judge shall not instruct the jury that it is unsafe to find the accused guilty in the absence of corroboration.

(2) Nothing in subsection (1) prevents a judge from commenting on the credibility of a witness in his charge to the jury.

246.4 (1) The rule that permits a previous consistent statement of a complainant to be admitted in evidence as a recent complaint is abrogated.

(2) In a proceeding for an offence in which a question is raised as to the consent of the complainant to the conduct of the accused, the complainant may give evidence of the making of a complaint concerning that conduct, but no evidence may be given of the particulars of the complaint unless the accused has questioned the credibility of the complainant on the basis of recent fabrication or previous inconsistent statement relating to that conduct.

(3) The judge in a proceeding referred to in subsection (2) is not required to give the jury any direction respecting the lack of a complaint concerning the conduct of the accused made within a reasonable time subsequent to the offence.

246.5 (1) Where an accused is charged with an offence under section 166 (sexual misconduct with person under fourteen), 168 (sexual misconduct by parent, guardian, etc.), 168.1 (incest), 169.1 (gross indecency), 246.1 (sexual assault) or 246.2 (aggravated sexual assault), no question shall be asked by or on behalf of the accused concerning the sexual activity of the complainant with a person other than the accused unless

(*a*) it relates to evidence that tends to show that the accused believed that the complainant consented to the sexual activity that is the subject-matter of the charge; or

(*b*) it tends to rebut evidence of the complainant's sexual activity that was previously introduced by the prosecution.

(2) No evidence is admissible under paragraph (1)(*a*) unless

(*a*) reasonable notice in writing has been given to the prosecutor by or on behalf of the accused of his intention to adduce the evidence together with particulars of the evidence sought to be adduced; and

(*b*) a copy of the notice has been filed with the clerk of the court.

(3) No evidence is admissible under subsection (1) unless the judge, magistrate or justice, after holding a hearing in which the jury and the members of the public are excluded and in which the complainant is not a compellable witness, is satisfied that the requirements of this section are met.

(4) The notice given under subsection (2) and the evidence taken, the information given or the representations made at a hearing referred to in subsection (3) shall not be published in any newspaper or broadcast.

(5) Every one who, without lawful excuse the proof of which lies upon him, contravenes subsection (4) is guilty of an offence punishable on summary conviction.

(6) In this section, "newspaper" has the same meaning as in section 261."

19. Sections 248 to 250 of the said Act are repealed and the following substituted therefor:

"**249.** (1) Every one who, without lawful authority, takes or causes to be taken an unmarried person under the age of sixteen years out of the possession of and against the will of the parent or guardian of that person or of any other person who has the lawful care or charge of that person is guilty of an indictable offence and is liable to imprisonment for five years.

(2) For the purpose of proceedings under this section, it is not a defence to the the charge that

(*a*) the person taken consents to or suggests the taking; or

(*b*) the accused believes that the person taken is sixteen years of age or more.

250. Every one who, not being the parent, guardian or person having the lawful care or charge of a child under the age of fourteen years, unlawfully has the possession of that child with intent to deprive a parent or guardian or any other person who has the lawful care or charge of that child of the possession of that child, is guilty of an indictable offence and is liable to imprisonment for ten years.

250.1 (1) Every one who, being the parent, guardian or person having the lawful care or charge of a child under the age of fourteen years,

(*a*) has the possession of that child in contravention of the custody or access provisions of a custody order in relation to that child made by a court anywhere in Canada, or

(*b*) where there is no custody order in relation to that child made by a court anywhere in Canada, has the possession of that child with intent to deprive a parent or guardian or any other person who has the lawful care or charge of that child of the possession of that child,

unless the parent, guardian or other person from whose lawful possession, care or charge the child was taken had consented to the taking, is guilty of an indictable offence and is liable to imprisonment for five years for an offence under paragraph (*a*) or to imprisonment for two years for an offence under paragraph (*b*).

(2) No proceedings may be commenced under subsection (1) without the consent of the Attorney General.

250.2 Sections 250 and 250.1 do not apply to a person who has the possession of a child in circumstances where the court is satisfied that such possession was essential for the welfare of that child, but the court shall not be so satisfied by reason only of the granting of a custody order in favour of the accused after he obtained the possession of that child."

20. Subsection 256(1) of the said Act is repealed and the following substituted therefor:

"**256.** (1) Every person who procures or knowingly aids in procuring a feigned marriage between himself and another person is guilty of an indictable offence and is liable to imprisonment for five years."

21. Paragraph 381(1)(*a*) of the said Act is repealed and the following substituted therefor:

"(*a*) uses violence or threats of violence to that person or his spouse or children, or injures his property,"

22. Paragraph 423(1)(*c*) of the said Act is repealed.

23. (1) Subparagraphs 429.1(*a*)(ii) and (iii) of the said Act are repealed and the following substituted therefor:

"(ii) section 246.2,"

(2) Paragraph 429.1(*b*) of the said Act is repealed and the following substitued therefor:

"(*b*) the offence of attempting to commit any offence referred to in paragraph (*a*), other than an offence under section 222, or"

24. Subsection 442(3) of the said Act is repealed and the following substituted therefor:

"(3) Where an accused is charged with an offence mentioned in section 246.3, the presiding judge, magistrate or justice may, or if application is made by the complainant or prosecutor, shall, make an order directing that the identity of the complainant and any information that could disclose the identity of the complainant shall not be published in any newspaper or broadcast.

(3.1) The presiding judge, magistrate or justice shall, at the first reasonable opportunity, inform the complainant of the right to make an application for an order under subsection (3)."

25. Paragraph 483(*c*) of the said Act is amended by adding thereto, immediately after subparagraph (vii) thereof, the following subparagraph:

"(viii) section 245 (assault),"

26. Paragraph (*b*) of the definition "serious personal injury offence" in section 687 of the said Act is repealed and the following substituted therefor:

"(*b*) an offence or attempt to commit an offence mentioned in section 166 (sexual misconduct with person under fourteen), 167 (sexual misconduct with person between fourteen and sixteen), 168 (sexual misconduct by parent, guardian, etc.), 169.1 (gross indecency), 246.1 (sexual assault) or 246.2 (aggravated sexual assault)."

27. Section 727 of the said Act is repealed.

28. Subsection 745(1) of the said Act is repealed and the following substituted therefor:

"745. (1) Any person who fears that another person will cause personal injury to him or his spouse or child or will damage his property may lay an information before a justice."

29. (1) Wherever the expression "serious bodily injury" appears in the definition "firearm" in subsection 82(1) and in paragraph 380(1)(*b*) of the English version of the said Act, there shall in each case be substituted therefor the expression "serious bodily harm".

(2) Wherever the expression "grievous bodily harm" appears in subsection 25(3) and sections 34 and 35 of the English version of the said Act, there shall in each case be substituted therefor the expression "serious bodily harm".

(3) Wherever the expression "bodily harm" appears in subsection 38(1), paragraph 49(*b*), section 77, paragraph 78(*b*), paragraph 79(1)(*b*) and sections 83 and 204 of the English version of the said Act, there shall in each case be substituted therefor the expression "bodily injury".

(4) Wherever the expression "bodily harm" appears in paragraph 229(*a*), subsection 231(1) and section 232 of the English version of the said Act, there shall in each case be substituted therefor the expression "serious bodily harm".

30. (1) Wherever the expression "blessures corporelles graves" appears in paragraph 35(*c*) and 380(l)(*b*) of the French version of the said Act, there shall in each case be substituted therefor the expression "lésions corporelles graves."

(2) Wherever the expression "lésions corporelles" appears in paragraph 49(*b*), subsection 83(1) and section 204 of the French version of the said Act, there shall in each case be substituted therefor the expression "blessures corporelles."

(3) Wherever the expression "lésion corporelle" appears in subsection 38(1) of the French version of the said Act, there shall in each case be substituted therefor the expression "blessure corporelle".

(4) Wherever the expression "lésions corporelles" appears in paragraph 229(*a*), subsection 231(1) and section 232 of the French version of the said Act, there shall in each case be substituted therefor the expression "lésions corporelles graves".

CANADA EVIDENCE ACT

31. (1) Subsection 4(2) of the *Canada Evidence Act* is repealed and the following substituted therefor:

"(2) The wife or husband of a person charged with an offence or attempt to commit an offence against section 33 or 34 of the *Juvenile Delinquents Act* or with an offence against any of sections 166 to 169.1, 195, 197, 200, 246.1, 246.2, 249, 250, 250.1, 255 to 258 or 289 of the *Criminal Code*, is a competent and compellable witness for the prosecution without the consent of the person charged."

(2) Section 4 of the said Act is further amended by adding thereto, immediately after subsection (3) thereof, the following subsection:

"(3.1) The wife or husband of a person charged with an offence against any of sections 203, 204, 218, 219, 220, 222, 223, 245, 245.1 or 245.2 of the *Criminal Code* where the complainant or victim is under the age of fourteen years is a competent and compellable witness for the prosecution without the consent of the person charged."

DIVORCE ACT

32. Paragraph 3(*b*) of the *Divorce Act* is repealed and the following substituted therefor:

"(*b*) has committed an assault involving sexual intercourse, an act of sodomy or bestiality or has engaged in a homosexual act;"

EXTRADITION ACT

33. (1) Item 10 of Schedule I to the *Extradition Act* is repealed and the following substituted therefor:

"**10.** Sexual assault or aggravated sexual assault;"

(2) Item 22 of Schedule I of the said Act is repealed and the following substituted therefor:

"**22.** Assault on board a vessel of a foreign state at sea, whether on the high seas or on the Great Lakes of North America, with intent to destroy life or to do serious bodily harm;"

(3) Paragraph (*a*) of item 24 of Schedule I to the said Act is repealed and the following substituted therefor:

"(*a*) sections 52, 58, 59, 77 to 79, 166 to 168, 174, 343 to 349, 351 to 354, subsection 355(1), sections 356, 358, 359, 363 and paragraph 423(1)(*a*) of the *Criminal Code*;"

(4) Items 8 and 9 of Schedule III to the said Act are repealed and the following substituted therefor:

"**8.** Sexual assault or aggravated sexual assault;

9. Abduction;"

(5) Item 19 of Schedule III to the said Act is repealed and the following substituted therefor:

"**19.** Assault on board a vessel of a foreign state at sea, whether on the high seas or on the Great Lakes of North America, with intent to destroy life or to do serious bodily harm;"

NATIONAL DEFENCE ACT

34. Section 60 of the *National Defence Act* is repealed and the following substituted therefor:

"**60.** A service tribunal shall not try any person charged with an offence of murder, manslaughter, or aggravated sexual assault committed in Canada."

TRANSITIONAL AND COMMENCEMENT

35. An offence committed prior to the coming into force of this Act against any provision of law affected by this Act shall be dealt with in all respects as if this Act had not come into force.

36. For the purposes of paragraph 3(*b*) of the *Divorce Act*, as enacted by section 32 of this Act, a person who is found to have committed rape, as it was known prior to the coming into force of this Act, shall be deemed to have committed an assault involving sexual intercourse.

37. This Act or any provision thereof shall come into force on a day or days to be fixed by proclamation.

Working Paper for Offences against Young Persons

(Discussion Paper prepared by the federal Department of Justice dealing with Sexual Offences against Young Persons and revising some of the provisions of Bill C-53).

CRIMINAL CODE

1. The *Criminal Code* is amended by adding thereto, immediately after section 137 thereof, the following:

"PART III.1
OFFENCES AGAINST YOUNG PERSONS

Interpretation

137.1 In this Part,

"guardian" includes any person who has in law or in fact the custody or control of another person;

"sexual conduct" includes any touching of a sexual nature or any sexual performance, but does not include conduct of an affectionate nature that is normal in a family context;

"sexual exploitation", in relation to a young person, means any sexual conduct where the young person is involved as a participant or otherwise;

"sexual performance" includes any pose, dance, photograph, motion picture, play or other visual representation in which vaginal, oral, or anal intercourse, bestiality, masturbation or sado-masochistic abuse, whether actual or simulated, or in which the lewd exhibition of the genitals, occurs or is depicted;

"visual representation" includes any representation that can be seen by any means, whether or not it involves the use of any special apparatus.

Sexual Exploitation of Young Persons

137.2 (1) Every one who engages in or procures the sexual exploitation of a person who

(*a*) is not his spouse, and

(*b*) is under the age of fourteen years,

is guilty of an indictable offence and is liable to imprisonment for fourteen years.

(2) No one shall be found guilty of the offence of engaging in the sexual exploitation of a person under subsection (1) if he establishes that

(*a*) at the time the sexual exploitation took place, he was under fourteen years of age; or

(*b*) he is less than three years older than the complainant.

137.3 (1) Every one who engages in or procures the sexual exploitation of a person who

(*a*) is not his spouse, and

(*b*) is fourteen years of age or more and is under the age of sixteen years,

is guilty of an indictable offence and is liable to imprisonment for ten years.

(2) No one shall be found guilty of the offence of engaging in the sexual exploitation of a person under subsection (1) if he establishes that

(*a*) at the time the sexual exploitation took place he was under sixteen years of age; or

(*b*) he is less than five years older than the complainant.

137.4 (1) Every one who, being the parent or guardian or having the lawful care or charge of or exercising authority over a person under eighteen years of age, engages in or procures the sexual exploitation of that person is guilty of an indictable offence and is liable to imprisonment for fourteen years.

(2) No one exercising authority over the complainant shall be found guilty of an offence under subsection (1) if he establishes that he is less than five years older than the complainant.

137.5 (1) Every one who, being the owner, occupier or manager of premises, permits the premises to be used for the purposes of the sexual exploitation of a person under sixteen years of age is guilty of an indictable offence and is liable to imprisonment for five years.

(2) No one shall be found guilty of an offence under subsection (1) if he establishes that he believed on reasonable grounds at the time the sexual exploitation took place that the complainant was sixteen years of age or more.

Child Pornography

137.6 (1) Every one who

(*a*) induces, coerces or agrees to use a person who is or appears to be under eighteen years of age to participate in any sexual conduct for the purpose of producing, by any means, a pornographic visual representation of such conduct,

(*b*) participates in the production of a pornographic visual representation of a person who is or appears to be under eighteen years of age participating in any sexual conduct,

(*c*) makes, prints, reproduces, publishes, distributes, circulates or has in his possession for the purpose of publication, distribution or circulation a pornographic visual representation of a person who is or appears to be under eighteen years of age participating in any sexual conduct, or

(*d*) sells, offers to sell, receives for sale, advertises, exposes to public view or has in his possession for the purpose of sale a pornographic visual representation of a person who is or appears to be under eighteen years of age participating in any sexual conduct,

is guilty of an indictable offence and is liable to imprisonment for ten years.

(2) For the purposes of subsection (1), a visual representation is pornographic if an object of the production thereof is an appeal to the sexual appetite or creation of sexual arousal.

(3) Subsections 159(3) to (5) apply, with such modifications as the circumstances require, to a person charged with an offence under subsection (1).

(4) In any proceeding under this Part, where a court is satisfied that a matter or thing is a pornographic visual representation referred to in subsection (1), the court shall order the matter or thing to be forfeited to Her Majesty in right of the province in which the proceedings take place, for disposal as the Attorney General may direct.

General

137.7 For the purpose of proceedings in respect of an offence under this Part, unless expressly provided otherwise in relation to any offence, it is not a defence to any charge that

(*a*) the complainant consented to any conduct of the accused; or

(*b*) the accused reasonably believed, at the time the conduct complained of took place, that the complainant had attained an age exceeding the age in relation to which the conduct was punishable.

137.8 In proceedings in respect of an offence under this Part,

(*a*) no evidence shall be adduced by or on behalf of the accused concerning the sexual activity of the complainant with any person, unless it is evidence of the sexual activity that formed the subject-matter of the charge;

(*b*) evidence of reputation, whether general or specific, is not admissible for the purpose of challenging or supporting the credibility of the complainant; and

(*c*) no corroboration is required for a conviction and the judge shall not instruct the jury that it is unsafe to find the accused guilty in the absence of corroboration."

2. Sections 140 and 141 of the said Act are repealed and the following substituted therefor:

"**140.** Where an accused is charged with an offence under section 149 or 156 in respect of a person under the age of fourteen years, the fact that the person consented to the commission of the offence is not a defence to the charge."

3. Sections 146 and 147 of the said Act are repealed and the following substituted therefor:

"**147.** No person shall be deemed to commit an offence under section 144, 145 or 150 while that person is under the age of fourteen years."

4. Sections 151 to 154 of the said Act are repealed.

5. Sections 166 to 168 of the said Act are repealed.

6. Section 175 of the said Act is repealed.

7. The definition "offence" in section 178.1 of the said Act is amended by striking out the reference to "79 (causing injury with intent)" where it occurs therein and substituting a reference to "79 (using explosives)" and by adding, immediately after the reference to "132 (prison breach)" a reference to "137.2 (sexual exploitation of person under fourteen), 137.3 (sexual exploitation of person between fourteen and sixteen), 137.4 (sexual exploitation by parent, guardian, etc.), 137.5 (use of premises for sexual exploitation), 137.6 (pornographic visual representation of sexual conduct of young persons),".

8. All that portion of section 213 of the said Act preceding paragraph (*a*) thereof is repealed and the following substituted therefor:

"**213.** Culpable homicide is murder where a person causes the death of a human being while committing or attempting to commit high treason or treason or an offence mentioned in section 52 (sabotage), 76 (piratical acts), 76.1 (hijacking an aircraft), 132 or subsection 133(1) or sections 134 to 136 (escape or rescue from prison or lawful custody), 137.2 (sexual exploitation of person under fourteen), 137.3 (sexual exploitation of person between fourteen and sixteen), 137.4 (sexual exploitation by parent, guardian, etc.), 137.5 (use of premises for sexual exploitation), 137.6 (pornographic visual representation of sexual conduct of young persons), 143 (rape), 149 or 156 (indecent assault), subsection 246(2) (resisting lawful arrest), section 247 (kidnapping and forcible confinement), 302 (robbery), 306 (breaking and entering) or 389 or 390 (arson), whether or not the person means to cause death to any human being and whether or not he knows that death is likely to be caused to any human being, if"

9. Subsection 214(5) of the said Act is repealed and the following substituted therefor:

"(5) Irrespective of whether a murder is planned and deliberate on the part of any person, murder is first degree murder in respect of a person when the death is caused by that person while committing or attempting to commit an offence under one of the following sections:

(a) section 76.1 (hijacking an aircraft);

(b) sections 137.2 to 137.5 (sexual exploitation of young persons);

(c) section 137.6 (pornographic visual representation of sexual conduct of young persons);

(d) section 144 (rape), 149 (indecent assault on female) or 156 (indecent assault on male); or

(e) section 247 (kidnapping and forcible confinement)."

10. Subparagraphs 429.1(*a*)(ii) and (iii) of the said Act are repealed and the following substituted therefor:

"(ii) sections 137.2 to 137.6,

(iii) section 144 or 145,"

11. Subsections 442(2) and (3) of the said Act are repealed and the following substituted therefor:

"(2) Where an accused is charged with an offence under sections 137.2 to 137.6 or that is mentioned in subsection 142(1) and the prosecutor or the accused makes an application for an order under subsection (1), the presiding judge, magistrate or justice, as the case may be, shall, if no such order is made, state, by reference to the circumstances of the case, the reason for not making an order.

(3) Where an accused is charged with an offence under sections 137.2 to 137.6 or that is mentioned in subsection 142(1), the presiding judge, magistrate or justice may, or if application is made by the complainant or prosecutor, shall, make an order directing that the identity of the complainant and any information that could disclose the identity of the complainant shall not be published in any newspaper or broadcast.

(3.1) The presiding judge, magistrate or justice shall, at the first reasonable opportunity, inform the complainant of the right to make an application for an order under subsection (3)."

12. Paragraph (*b*) of the definition "serious personal injury offence" in section 687 of the said Act is repealed and the following substituted therefor:

"(*b*) an offence or attempt to commit an offence mentioned in sections 137.2 to 137.5 (sexual exploitation of young persons), section 137.6 (pornographic visual representation of sexual conduct of young persons), 144 (rape), 145 (attempted rape), 146 (sexual intercourse with a female under fourteen or between fourteen and sixteen), 149 (indecent assault on a female), 156 (indecent assault on a male) or 157 (gross indecency)."

13. The said Act is further amended by adding thereto, immediately after section 745 thereof, the following section:

"**745.1** (1) Any person who has reasonable grounds for believing that a person who has been found guilty of an offence under Part III.1 or sections 143 to 157 has been wandering or loitering in or near a school ground, playground, public park, bathing area or other place normally frequented by young persons may lay an information before a justice.

(2) A justice who receives an information under subsection (1) shall cause the parties to appear before him or before a summary conviction court having jurisdiction in the same territorial division.

(3) Where the justice or the summary conviction court is satisfied by the evidence adduced that the informant had reasonable grounds for laying an information, the justice or court may

(*a*) order that the defendant enter into a recognizance, with or without sureties, to keep the peace and be of good behaviour for any period that does not exceed twelve months, and comply with such other reasonable conditions prescribed in the recognizance as the court considers desirable for securing the good conduct of the defendant; or

(*b*) commit the defendant to prison for a term not exceeding twelve months if he fails or refuses to enter into the recognizance.

(4) A recognizance and committal to prison in default of recognizance under subsection (3) may be in Forms 28 and 20 respectively.

(5) The provisions of this Part apply, with such modifications as the circumstances require, to proceedings under this section."

CANADA EVIDENCE ACT

14. (1) Subsection 4(2) of the *Canada Evidence Act* is repealed and the following substituted therefor:

"(2) The wife or husband of a person charged with an offence or attempt to commit an offence against section 33 or 34 of the *Juvenile Delinquents Act* or with an offence against any of sections 137.2 to 137.6, 143 to 146, 148, 150 to 155, 157, 169, 175, 195, 197, 200, 248 to 250, 255 to 258 or 289 or paragraph 423(1)(*c*) of the *Criminal Code*, is a competent and compellable witness for the prosecution without the consent of the person charged."

(2) Section 4 of the said Act is further amended by adding thereto, immediately after subsection (3) thereof, the following subsection:

"(3.1) The wife or husband of a person charged with an offence against any of sections 203, 204, 218, 219, 220, 222, 223 or 245 of the *Criminal Code*, where the complainant or victim is under the age of fourteen years, is a competent and compellable witness for the prosecution without the consent of the person charged."

COMMENCEMENT

15. This Act or any provision thereof shall come into force on a day or days to be fixed by proclamation.

Criminal Law Reform Act, 1984
(Excerpts from Bill C-19, 2nd Session, 32nd Parliament, 32-33 Elizabeth II, 1983-84)

First Reading, February 7, 1984

Her Majesty, by and with the advice and consent of the Senate and House of Commons of Canada, enacts as follows:

SHORT TITLE

1. This Act may be cited as the *Criminal Law Reform Act, 1984*.

PART I
CRIMINAL CODE

35. Subsection 150(3) of the said Act is repealed and the following substituted therefor:

"(3) Notwithstanding subsection 660(1), where a court determines that a female person is guilty of an offence under this section and the court is satisfied that she committed the offence by reason only that she was under restraint, duress or fear of the person with whom she had the sexual intercourse, the court may, instead of convicting that person, discharge her under section 660 of that offence."

36. Subsection 159(8) of the said Act is repealed and the following substituted therefor:

"(8) For the purposes of this Act, any matter or thing is obscene where a dominant characteristic of the matter or thing is the undue exploitation of any one or more of the following subjects, namely, sex, violence, crime, horror or cruelty, through degrading representations of a male or female person or in any other manner.

(9) Where a court convicts a person of an offence under this section, it shall make an order declaring the matter or thing by means of or in relation to which the offence was committed forfeited to Her Majesty in right of the province in which the proceedings took place, for disposal as the Attorney General may direct."

48. Section 195.1 of the said Act is amended by adding thereto the following subsection:

"(2) In this section,

"prostitution" includes obtaining the services of a prostitute;

"public place" includes a motor vehicle located in or on a public place."

58. Section 253 of the said Act is repealed.

206. The heading preceding section 662 and sections 662 to 667 of the said Act are repealed and the following substituted therefor:

Restitution

665. (1) Where an offender is convicted of an offence, the court may make an order that an offender shall, on such terms as the court may fix, make restitution to another person in one or any combination of the following ways that is applicable and appropriate in the circumstances, namely,

(*a*) subject to subsection (3), in the case of property obtained by the offender as a result of the commission of the offence, by returning the property to that person or to someone designated by that person if that person is the lawful owner or lawfully entitled to possession of the property;

(*b*) in the case of damage to, or the loss or destruction of, the property of any person arising from the commission of an offence or the arrest or attempted arrest of the offender, by paying to that person an amount not exceeding the replacement value of the property on the date the order is imposed less the value of any part of the property that is returned to that person as of the date it is returned, where such amount is readily ascertainable;

(*c*) in the case of bodily injury to any person arising from the commission of an offence or the arrest or attempted arrest of the offender, by paying an amount equal to all special damages and loss of income or support incurred as a result of the bodily injury, where the value thereof is readily ascertainable;

(*d*) by paying an amount of punitive damages

(i) where the offender is an individual, not exceeding two thousand dollars in respect of a summary conviction offence and not exceeding ten thousand dollars in respect of an indictable offence, and

(ii) where the offender is a corporation, not exceeding twenty-five thousand dollars in respect of a summary conviction offence and in an amount in the discretion of the court in respect of an indictable offence; and

(*e*) subject to subsection (2), where the person to whom restitution is to be made and the offender agree on restitution, by making restitution in the manner provided for in the agreement.

(2) The agreement referred to in paragraph (1)(*e*)

(a) may provide that the offender shall make restitution in any manner, for example, by

(i) returning property obtained as a result of the commission of the offence or other property in lieu thereof or paying a sum of money to that person, or

(ii) performing the unpaid work specified in the agreement as restitution to that person for any loss, damage or injury suffered by that person in respect of which restitution under paragraph (1)(*b*) or (*c*) may be ordered to be made;

(b) shall not provide that the offender shall pay an amount for punitive damages; and

(c) shall be in writing and filed with the court, where the court so directs.

209. The said Act is further amended by adding thereto, immediately after the renumbered section 668.29, the following heading and sections:

Dangerous Offenders

668.3 In Section 668.31, "serious personal injury offence" means an indictable offence, other than high treason, treason, first degree murder or second degree murder, involving

(*a*) the use or attempted use of violence against another person, or

(*b*) conduct endangering or likely to endanger the life or safety of another person

and for which the offender may be sentenced to imprisonment for ten years or more.

668.31 (1) Where, on an application made following the conviction of an offender, it is established to the satisfaction of the court, at the time of the sentencing hearing held pursuant to subsection 646(1), that the offence for which the offender has been convicted is a serious personal injury offence and

(*a*) is of such a brutal nature as to compel the conclusion that the offender constitutes a threat to the life, safety or physical well-being of other persons, or

(*b*) forms a part of a pattern of repetitive behaviour by the offender showing a failure to restrain his behaviour and a wanton and reckless disregard for the lives, safety or physical well-being of others,

the court shall impose a sentence of imprisonment for life in lieu of any other sentence that might be imposed for the offence for which the offender has been convicted.

(2) No application shall be heard under this section unless

(*a*) the Attorney General of the province in which the offender was tried gives, before or after the making of the application, his personal consent in writing to the application;

(*b*) notice was given by the prosecutor to the offender or his counsel, before the offender pleaded to the offence, that an application would be made under this section on conviction;

(*c*) at least seven days notice is given to the offender by the prosecutor, after the making of the application, outlining the basis on which it is intended to found the application; and

(*d*) copies of the notices referred to in paragraphs (*b*) and (*c*) are filed with the clerk of the court."

210. (1) Section 669 of the said Act is amended by adding thereto, immediately after paragraph (*a*) thereof, the following paragraph:

"(*a*.1) where the provisions of section 592 have been complied with, in respect of a person who has been convicted of second degree murder where he has previously been convicted of culpable homicide that is murder, however described under this Act, that he be sentenced to imprisonment for life without eligibility for parole until he has served twenty-five years of his sentence;"

(2) Section 669 of the said Act is further amended by striking out the word "and" at the end of paragraph (*b*) thereof and by adding thereto the following paragraph:

"(b.1) in respect of a person who has been sentenced to imprisonment for life under section 668.31, that he be sentenced to imprisonment for life without eligibility for parole until he has served ten years of his sentence; and"

214. Part XXI of the said Act is repealed.